



**PUR 1003 PURCHASING TERMS AND CONDITION!**

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**PURCHASING TERMS AND CONDITIONS**

These Terms and Conditions supersede all previous agreements and representations relating to the subject matter hereof. Any representation, promise, or condition in connection with this order, not incorporated herein, shall not be binding upon the Buyer, STULZ Air Technology Systems, Inc. (STULZ).

Any terms that differ in any respect from these Terms and Conditions are hereby null and void. Such proposed terms are null and void whether they are introduced by the party placing this order, or if they are contained in any master agreement, subcontract, or other agreement among third parties related to this order, but to which STULZ is not a party. In addition, and without limitation, the terms and conditions of this Agreement shall govern and take precedence over any terms and conditions that may be required to accept by way of clicking an "Accept" button, "Agree" button, or similar button at either party's designated website in order to access, download and/or use the Software or Documentation.

STULZ Air Technology Systems, Inc ("Buyer") and Seller agree as follows:

**1) AGREEMENT** - These Terms and Conditions, and the Purchase Order ("Order") into which they are incorporated by reference, contain the complete and exclusive agreement between Buyer and Seller and supersede all prior negotiations or agreements, whether written or oral. No modification, amendment, extension, renewal, revision, discharge, abandonment, waiver or other change or alteration shall be valid, enforceable, or binding on Buyer unless agreed to in a subsequent writing signed by an authorized representative of Buyer. The failure of Buyer to actively reject, either orally or in writing, any additional conflicting or contradictory term contained in any subsequent document or communication between Buyer or Seller relating to the transactions referred to in this order shall not constitute an assent to such terms and conditions and shall render the transaction voidable at the sole discretion of Seller.

**2) ADDENDA** - All supplemental or acknowledged sheets, schedules, exhibits, specifications, drawings, data or riders which may be attached hereto or referenced herein are made part of this Order. Seller acknowledges that it has available to it all specifications, drawings and data incorporated in this Order, and that they are adequate to enable Seller to perform all work herein in accordance with the delivery schedule.

**3) MODIFICATION** - Buyer shall have the right to suspend this order or change any of the specifications hereof at any time prior to delivery. In the event of any such suspension or change, Buyer shall not be responsible for any increase in price or extra expenses incurred by Seller as a result of such suspension or change, unless specifically and previously agreed to in writing by Buyer. If such change results in a reduction in materials or equipment to be delivered, the price shall be equitably decreased.

**4) NO WAIVER** - Buyer's failure to insist upon strict compliance shall not be deemed to be a waiver of any right, and waiver of a right under this Order shall not constitute a waiver of any other right or waiver of any other default under this Order.

**5) PACKING, MARKING AND SHIPPING** - Seller shall pack, mark and ship all Products in accordance with the requirements of this Order so as to be in compliance with transportation regulations and good commercial practice for protection and shipment and shall secure the most advantageous transportation service and rates consistent therewith. No separate or additional charge is payable by Buyer for containers, crating, boxing, bundling, dunnage, drayage, or storage unless specifically stated in this Order. Any expense incurred by Buyer as a result of improper preservation, packaging, packing, marking or method of delivery shall be reimbursed by Seller. A packing list with the Order number shall be included with each delivery, with each container marked to show the Order number. Any transportation charges paid by Seller for which Seller is entitled to reimbursement shall be shown on Seller's invoice as a separate line item with the receipted freight bill attached thereto. The Buyer reserves the right to reject overruns and over-shipments unless the Seller is given prior written approval by the Buyer.

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**6) DELIVERY** - Time is of the essence in connection with Seller's performance under this Purchase Order. If delivery of services, materials, or equipment is not completed by the time proscribed herein, Buyer may call for expedited shipment and Seller will be responsible for any extra costs. In addition to its other rights and remedies, Buyer shall also have the right without any obligation to Seller to terminate this Purchase Order if not completed timely or as specified. Promptly upon shipment, Seller shall furnish the Buyer with a copy of the Bill of Lading information. Buyer may recover, as liquidated damages, 1% per week for late shipments.

**7) TITLE AND RISK OF LOSS** - Risk of loss or damage to Products shall remain with Seller until all Products are delivered to Buyer at the destination set forth in this Order, or, if installation is specified, until installation of Product. Title to Product shall remain with Seller until receiving inspection and final acceptance has taken place by Buyer in accordance with the inspection provisions of this Order. Passing of title upon Product delivery to Buyer at the destination set forth shall not constitute Product acceptance by Buyer. All Products to be delivered to Buyer hereunder shall be free and clear of any and all liens and encumbrances.

**8) INSPECTION; ACCEPTANCE; REJECTION OF GOODS OR SERVICES** - All of the goods or services will be subject to inspection and tests by Buyer at all reasonable times and places prior to acceptance. Final inspection shall be at Buyer's premises unless otherwise agreed to in writing. Acceptance of the goods or services shall take place at the time when such goods or services have been delivered to Buyer and have passed Buyer's inspection and tests, for which a reasonable time after delivery will be permitted. Without limiting any other rights or remedies it may have as provided herein or at law or equity, Buyer, at its option, may (i) require Seller to repair or replace at Seller's expense any Product ordered which fails to meet any requirement of this Order; (ii) require Seller to refund the price of any such item; (iii) elect to retain and repair any such Products with an appropriate reduction from the price otherwise due Seller to offset Buyer's costs of effecting necessary correction; or (iv) recover by offset or otherwise any and all damages incurred by Buyer as a result of such rejection. Neither final inspection, payment, nor any limitations contained in the warranty clause shall relieve Seller from responsibility of the correction or replacement of defective Product arising due to fraud, gross mistakes amounting to fraud, or for latent defects. Seller shall maintain an inspection system suitable to Buyer.

**9) QUALITY ASSURANCE PLAN** - Seller shall maintain a Quality Assurance Plan acceptable to Buyer. This plan shall be similar to ISO 9001 requirements.

**10) TERMINATION FOR CONVENIENCE** - (a) Buyer may at any time terminate all or any part of this Order for its sole convenience, and Seller shall immediately stop all work hereunder, cause any of its suppliers or subcontractors to cease such work and take all other necessary steps to minimize its costs hereunder. Such termination shall be effective upon Buyer's transmittal to Seller of written notice of termination by email, First Class U.S. Mail, common courier, or any other commercially acceptable means of providing notice, specifying the extent to which the performance of work under this Order is terminated and the date upon in which the termination becomes effective. (b) Upon receipt of a written notice of termination and except as otherwise directed by Buyer, the Seller shall (i) immediately stop work under this Order on the date and to the extent specified in the notice of termination; (ii) take such action as may be necessary for the protection and preservation of Buyer material; (iii) take no further action which will increase the Seller's cost or the price payable by Buyer under the terminated portion of this Order; and (iv) complete performance of such part of the work as shall not have been terminated by the notice of termination. (c) Within 90 days after receipt of notice of termination, Seller shall submit its termination claim. In the event that Seller fails to submit a termination claim within the time allowed, Buyer may determine the amount due, if any, to Seller by reason of the termination and Buyer's determination shall be final. (d) The amount due to Seller by reason of termination under this clause shall be determined as follows: Provided such termination is for any reason other than described in Paragraph 4, 6, and 8, Buyer shall pay Seller as sole and complete compensation: (i) a percentage of the Order price equal to the percentage of the work performed in conformity with this Order; plus (ii) Seller's actual direct expenses resulting from such termination.

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**11) TERMINATION FOR CAUSE** - Buyer may also terminate all or any part of this Order for cause in the event of any default, including but not limited to: (a) Seller's failure to strictly comply with any of the Terms and Conditions of this Order; (b) Seller's failure to give Buyer, upon request, reasonable assurances of Seller's future performance; (c) insolvency, bankruptcy, liquidation or dissolution of Seller; or (d) any other event which causes reasonable doubt as to Seller's ability to render due performance hereunder. In the event of termination for cause, Seller shall be liable to Buyer for any and all damages sustained by reason of such default.

**12) FORCE MAJEURE** - Neither party shall be liable for failure to perform solely caused by unforeseeable Force Majeure circumstances beyond their control ("Force Majeure"). The party experiencing the Force Majeure circumstances shall notify the other party of the delay as soon as reasonably possible and shall cooperate in minimizing the impact of such Force Majeure. If such circumstances occur, the injured party may elect to terminate this Order in whole or in part upon written notice. Buyer acknowledges and accepts all risk of delay due to circumstances related to the Covid-19 pandemic, and such circumstances do not constitute a Force Majeure event.

**13) ASSIGNMENT/SUBCONTRACTING** - No part of this Order may be assigned or subcontracted by Seller without the prior written consent of Buyer.

**14) INVOICING AND PAYMENT** - A separate invoice shall be issued to Buyer for each Product delivery made by Seller. Unless otherwise specified in this Order, an invoice shall not be issued or dated prior to delivery of Products and payment will not be made prior to receipt of Products and a correct invoice. Applicable credit and discount periods will be computed from the date of receipt of the correct invoice to the date Buyer's check is mailed. Only one order may be referenced on any single invoice.

**15) TAXES** - Except as may be otherwise provided on the face hereof or agreed by Buyer in writing, the contract price includes: (i) all applicable Federal, State and local taxes, fees, excises, duties, and/or charges which are now or may be hereafter imposed with respect to the manufacture and sale of Products herein; and (ii) all charges or costs associated with suitable packing, packaging, preparation for delivery, crating or cartage of the Products ordered. In case of new taxes or increased rates or the repeal of taxes or the reduction of rates, the price of the goods shall be adjusted; accordingly, provided that, in the event of new and increased taxes, Buyer must be notified immediately in writing and shall have the right to cancel this Order.

**16) MOST FAVORED CUSTOMER** - Seller represents that the prices set forth in this Order are based on most current pricing data and do not exceed the last price or prices charged or quoted or currently being quoted for the same or substantially similar products to any other buyer, taking into account quantity and schedule considerations.

**17) RIGHT OF SET-OFF** - All claims for monies due or to become due from Buyer shall be subject to deduction by Buyer for any set-off or counterclaim arising out of this or any other transaction between the parties hereto, regardless of when such set-off or counterclaim arose and whether it arose before or after any assignment by Seller.

**18) RESOLUTION OF CONFLICTS AND DISCREPANCIES** - Seller shall comply with this Order and all referenced documents as written. In the event of any discrepancies and/or inconsistencies in this Order, Seller shall clarify and resolve any such discrepancies and/or inconsistencies with Buyer in a timely manner and before proceeding with any work in questions. If Seller determines during the performance of this Order, that any portion of this Order is inaccurate, inconsistent, or incomplete, it shall promptly notify Buyer in writing, specifying full particulars and request resolution before proceeding with the work effort in questions. In the event that the Seller fails to contact Buyer in a timely manner or proceeds with any work in questions to resolve said discrepancies and/or inconsistencies, Seller shall be deemed to have proceeded on its own accord and shall be solely responsible for any errors and associated costs and/or schedule impacts resulting therefrom.

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**19) MEDIATION** - Any controversy or claim between the parties, their agents, employees, officers, directors, or affiliates arising out of or relating to this Agreement, or the performance or breach thereof ("Dispute") shall, at Buyer's option, first be submitted to mediation prior to the filing of any judicial action. Demand for mediation shall be in writing. If either side demands mediation, the Dispute shall be submitted to a mediator chosen by the Buyer. Seller shall be obligated to attend and participate in good faith in at least one-two hour mediation session prior to the institution of any litigation by Seller. In the event of litigation arising out of this Order or any products/services sold to Buyer by Seller, the Buyer shall be entitled to recover its reasonable attorneys' fees.

**20) CONFIDENTIALITY** - No public release (including, without limitation, photographs, films, announcements and denials or confirmations of the placing of this order) with respect to this order, the subject matter hereof, or any phase of any program hereunder, shall be made without the prior written approval of Buyer.

**21) LIMITATION OF LIABILITY** - In no event shall Buyer be liable for direct, indirect, incidental, or consequential damages, including but not limited to loss of profits and loss of use of equipment, facilities, capital or money whether such liability is grounded in contract, tort or any other cause whatsoever. Seller must commence suit with respect to any claim arising out of or in connection with this Order within one (1) year after the cause of action accrued. Buyer's maximum liability to Seller shall not exceed ten (10%) percent of the total Order.

**22) COMPLIANCE WITH LAW** - Seller shall comply with all applicable federal, state and local laws, executive orders, rules and regulations, including but not limited to the Occupational Safety and Health Act of 1970, as amended ("OSHA"); the Toxic Substances Control Act, as amended ("TSCA"); the Fair Labor Standards Act of 1938, as amended ("FLSA"); and Executive Order 11246 of September 24, 1965. Seller warrants that all equipment, goods, labor and services furnished hereunder shall conform to and comply with the OSHA standards and regulations and have been manufactured or furnished in accordance with the FLSA and regulations issued thereunder. Seller further warrants that all substances delivered hereunder conform to and comply with the TSCA and regulations issued thereunder. Further, Seller shall also maintain a Drug-Free Policy in accordance with applicable federal, state and local laws, executive orders, rules and regulations. Seller agrees to indemnify and hold Buyer and its customers harmless for any loss, damage or expense sustained because of Seller's failure to comply with any applicable law, order, rule or regulation.

**23) PATENTS/LICENSE TO REPAIR** - (a) Seller warrants that the sale or use of any equipment, goods, or services furnished under this Order will not infringe any patent, trademark or copyright or process of manufacture. Seller shall protect, defend, indemnify and hold harmless Buyer, its successors, assigns, subsidiaries, affiliates, and customers or users from and against any and all claims, demands and liability for any alleged or actual infringement or wrongful use of any patent, trademark or copyright of the equipment or goods furnished under this Order; and (b) Seller grants Buyer a nonexclusive, royalty-free, irrevocable license to repair, rebuild and relocate the equipment or goods furnished under this Order. If Buyer is prevented from using the goods sold, Seller shall, at Buyer's option either 1) repair such goods so that they are no longer infringing; 2) replace goods with non-infringing goods; or 3) refund to Buyer the full purchase price of such infringing goods.

**24) DESIGN AND INVENTION RIGHTS** - If this Order includes design, experimental, developmental or research work, a) Buyer shall own all rights, title and interest in all Works, and such shall be considered Works for Hire; b) Seller shall communicate promptly to Buyer full details of any ideas, improvements, designs or inventions (whether or not patentable) conceived of, developed or first reduced to practice by seller or any of its employees in connection with the performance of this Order. Upon Buyer's request, Seller shall assign to Buyer all right, title and interest of Seller, of its employees in each such idea, improvements, designs or inventions, and to perform all acts (at Buyer's expense) and execute all papers necessary to vest in Buyer full right, title and interest therein, including the patenting thereof.

**25) INDEMNIFICATION** - To the fullest extent permitted by law, Seller shall protect, defend (if required and with counsel selected by Buyer), indemnify and hold harmless Buyer, its successors, assigns, subsidiaries, affiliates and customers or users against any and all damages, claims, or liabilities and expenses (including attorneys' fees) arising directly or

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indirectly from or out of any actual or alleged (a) defect in design, material or workmanship of the goods or services ordered hereunder; (b) infringement of a patent, trademark, copyright or other intellectual property right of a third party, or misappropriation of trade secrets or other confidential information of a third party, regarding any item, work or product of work; (c) price discrimination or price fixing regarding any of the prices specified herein; (d) negligent or willful act, errors or omissions of Seller, its officers, directors, employees, agents invitees or subcontractors, (e) failure by Seller to perform any of its obligations hereunder; (f) breach of the warranties (express, implied and by statute) and representations made by Seller herein; and (g) any occupational illness or injury sustained by an employee or agent of Seller in furtherance of this Order.

**26) WARRANTY** - Seller warrants the Products ordered to Buyer's specifications will conform thereto and to any drawings, samples or other descriptions furnished by Buyer and, if ordered to Seller's design or descriptive literature, shall be fit and sufficient for the purpose intended. In any event, all Products shall be merchantable, of good material and workmanship, and free from defects. Such warranties, together with Seller's service warranties and guarantees, if any, shall survive inspection tests, acceptance of, and payment for the Products and shall run to Buyer, its successors, assigns and customers. Buyer may, at its option, either return for credit or require prompt correction or replacement of any defective or non-conforming Products or part thereof. The return to Seller of such article and delivery to Buyer of any corrected or replaced articles shall be at Seller's expense. Products required to be corrected or replaced shall be subject to the provisions of this clause and the "Inspection" clause in the manner and to the same extent as articles originally delivered under this Order. Except for latent defects, fraud or such gross mistakes as amounts to fraud, Seller's obligations under this clause shall apply to such defects and non-conformance as occur within two (2) years from the date of Product delivery or redelivery to Buyer or to Buyer's customer. All warranties, both express and implied, shall be construed as conditions as well as promises, and shall not be deemed to be exclusive. In the event of a failure rate in excess of 2% of all products sold to Buyer during any 12-month, the Buyer may require that all products be removed and replaced at Seller's sole expense.

**27) NOTIFICATION OF OBSOLESCENCE** - Seller shall notify Buyer within ninety (90) days of any product or material obsolescence.

**28) PROPRIETARY INFORMATION** - Seller shall hold all information furnished by Buyer in confidence and shall not disclose, reproduce or use any such information to any other person or use such information itself for any purpose other than performing this Order without prior written consent from Buyer. The restrictions contained in this paragraph shall apply to drawings, specifications or other documents prepared by Seller for Buyer in connection with this Order. Upon completion of work by Seller under this Order, Seller shall promptly return all Data to Buyer together with all copies or reprints thereof then in Seller's possession or control. Any information which Seller may disclose to Buyer with respect to the design, manufacture, sale or use of the items covered by this Order shall be deemed to have been disclosed as part of the consideration for this Order and Seller shall not assert any claim (other than a claim for patent infringement) against Buyer by reason of Buyer's use thereof.

**29) SPECIAL EQUIPMENT** - a) Title to all tools, dies, jigs and fixtures used in the manufacture of Products herein (hereinafter referred to as "Special Equipment") shall vest in Buyer immediately upon Seller's manufacture or acquisition thereof, Seller agreeing that the purchase price stated on the face of this Order includes the cost of any such Special Equipment manufactured or acquired in pursuance hereof. Similarly, special equipment used by Seller as owned, furnished, or paid for by Buyer under the terms of this Order or other of Buyer's Orders and used herein shall remain the property of Buyer and shall not be altered or modified without Buyer's consent. (b) Unless otherwise approved by Buyer, special equipment shall be used only in the performance of this Order. (c) At no additional cost to Buyer, Seller shall follow normal industrial practices in the identification, maintenance, preservation and segregation of special equipment.

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**30) SEVERABILITY** – If any term or provision of this Order is determined to be invalid or unenforceable, such determination shall not affect the validity of the remaining terms and conditions. In such cases, the Order shall be deemed to have been executed without the invalid or unenforceable term or provision.

**31) PERMITS AND INSPECTIONS** – Seller shall obtain and pay for all permits, licenses, tests, and official inspections necessary to its performance under this Agreement, and shall comply with all laws, ordinances and regulations bearing on the production of the Materials and the delivery thereof.

**32) INSURANCE** - Prior to the delivery of the Products, Seller shall procure and thereafter maintain the following minimum insurance protecting Seller and Buyer against liability from damages because of injuries, including death, suffered by persons, including employees of Buyer, and liability from damages to property arising from or growing out of Seller's operations in connection with the performance of this Order: Worker's Compensation: (a) State -- statutory limits; (b) Employer's Liability: \$500,000; Commercial General Liability: (a) General Aggregate (other than products completed operations): \$2,000,000; (b) Aggregate Limit (products completed operations) \$2,000,000; (c) Per Occurrence Limit: \$1,000,000 Commercial Automobile Liability: (a) Combined Single Limit: \$1,000,000 Umbrella/Excess Liability (a) Umbrella (Aggregate Limit): \$5,000,000; as applicable, Professional Liability Coverage: (a) \$5,000,000. Seller must issue a certificate of insurance evidencing the above coverage and naming Buyer as additional insured. Seller's insurers must provide thirty (30) days written notice of cancellation in the above coverage limits.

**33) GOVERNING LAW** - These Terms and Conditions are to be construed and interpreted in accordance with the laws in the State of Maryland, without regard to conflicts of laws principles. Seller consents to the exclusive jurisdiction of the state and federal courts of Maryland for the resolution of any disputes arising out of the Order. Any action by customer arising out of this agreement or these terms, must be brought within one (1) year from the date of accrual.