

## MONOGRAM SYSTEMS TERMS AND CONDITIONS OF PURCHASE

1. **FORMATION.** This Order constitutes Monogram's offer to Seller and becomes a binding contract subject to the Terms and Conditions set forth herein when accepted by acknowledgment or commencement of performance by Seller. The offer expressly limits acceptance to these Terms and Conditions of Purchase. Monogram hereby objects to any different or additional terms contained in any response to this Order.
2. **DEFINITIONS.** Whenever used in this Order (a) "Customer" means any customer of Monogram, any subsequent owner, operator or user of the Products and any other individual, partnership, corporation or person or entity which has or acquires any interest in the Products from, through or under Monogram; (b) "Products" means all the Products, services, data, software and other items furnished or to be furnished to Monogram under this Order; and (c) "Order" means the purchase order that incorporates by reference these Terms and Conditions of Purchase, F-7221-81, and all of the specifications, technical descriptions, statements of work, drawings, designs, documents, and other requirements and provisions attached to, incorporated into, or otherwise made a part of this purchase order by Monogram.
3. **DELIVERY.** Deliveries shall be made in quantities and at the times specified in the Order. Monogram reserves the right to reject or return to Seller, at Seller's risk and expense, all Products shipped later than, or in advance of, the time specified for delivery, or to defer payment for advance deliveries until the scheduled delivery date. Monogram reserves the right at any time, by written notice to Seller, to change the delivery schedules, or to direct temporary suspension of scheduled shipments, without any additional charge. Seller shall promptly notify Monogram, in writing, of any anticipated or actual delay, the reasons therefore and the actions being taken by Seller to overcome or minimize delay. If requested by Monogram, Seller shall, at Seller's expense, ship via expedite routing to avoid or minimize the delay to the maximum extent possible. If Seller does not comply with or fails to meet Monogram's delivery schedule, Monogram may obtain the Products from other sources, and if available, may terminate this Order, in whole or in part, without liability to Seller, and may recover from Seller all damages suffered by Monogram on account of Seller's failure to meet the delivery schedule, including, but not limited to, cost of Products exceeding the price specified hereunder, acquisition costs, and liability to Monogram's Customer, arising out of the delay in delivery. In addition to any rights which Monogram may have hereunder, at law, or in equity, Seller shall pay liquidated damages to Monogram for delay in the delivery of the Product or any part thereof, which is the subject of an Order. Liquidated damages will be calculated from the first day of the delay until the day the Product is received. The amount of the liquidated damages will equal two percent (2%) per day of the value of the delayed Product and shall accrue from the first day of the delay, up to a maximum of thirty percent (30%) of the value of the delayed Product. However, for damages exceeding the aforementioned amount, Monogram shall have the right to claim actual damages from Seller. In such case, Seller shall pay the full amount of the actual damages to Monogram upon demand from Monogram.
4. **TITLE/RISK OF LOSS.** Title to the Products shall pass upon delivery to Monogram, or to a common carrier appointed by Monogram, at the F.O.B. point. Seller shall bear all risk of loss on Products covered by this Order until final acceptance of the Products at the F.O.B. point specified on the face of this Order.
5. **PACKING/SHIPPING/LABELLING.** Seller shall provide adequate protective packing to prevent damage and deterioration of the Products, and comply with carrier tariffs, at no additional charge to Monogram. Shipments shall be made in accordance with Monogram's specific shipping instructions. Seller shall enclose a packing slip with each shipment, and all packages/ documentation shall reference, or be marked with, Monogram's Order number. When more than one package is shipped, Seller shall identify the package containing the packing slip. Sellers are required to apply a label to all shipping containers with the following information: 1) Seller Name; 2)Part Number; 3)Order Number; 4) Drawing Revision Letter; 5) Total Shipment Quantity; 6) For multiple box shipments, state box number and total number of boxes (Box 1 of 3, Box 2 of 3, etc.); 7) For multiple box shipments, state quantity in each box relative to total (e.g.: Qty = 25 of 100). For readability the label shall be 3" x 5" minimum, with Font size 18 or higher.
6. **PRICE.** Unless otherwise indicated on the face of the Order, the price(s) set forth herein shall be firm prices. Seller warrants that prices for Products sold to Monogram under this Order are no less favorable than those extended by Seller to any other customer for the same or like Products, in equal or lesser quantities, on similar terms and conditions.
7. **INVOICE AND PAYMENT.** Seller shall issue a separate invoice for each delivery and shall not issue any invoice prior to the Order scheduled delivery date, or actual delivery date, whichever is later. Unless freight or other charges are itemized, any discount may be taken on full amount of invoice. Payment due date, including discount periods, shall be computed from date of receipt of Products or correct invoice, whichever is later, to date Monogram's check is mailed or otherwise tendered. In the event the payment due date occurs between the first and fifteenth day of the month, the payment term shall be extended until the fifteenth of the month. In the event the payment due date occurs between the sixteenth day of the month and the first day of the following month, the payment term shall be extended until the first day of the following month. Seller shall promptly repay to Monogram any amounts paid in excess of amounts due Seller.

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**8. WARRANTIES.** Seller warrants that all Products delivered or furnished pursuant to this Order shall: (a) conform to (i) the specifications, drawings, samples and/or descriptions furnished or specified by Monogram; or (ii) Seller's design; (b) be merchantable and fit in every respect for the purpose intended; (c) be free from design defects; (d) be free from defects in material and/or workmanship; and (e) be free of any liens, encumbrances, and clouds on title. This Order expressly includes all implied warranties and all of the buyer's remedies set forth in the Uniform Commercial Code. The warranty shall continue for forty-eight (48) months from Product entry into service. Seller's warranty is for Monogram, its successors, assigns, Customers of its Products, and shall be construed as a condition and warranty, without limitation of any rights which Monogram may have at law, by reason of any breach of warranty hereunder. Monogram's approval of Seller's samples shall not be construed as a waiver by the Monogram of any requirement of the drawings, specifications, and/or other descriptions applicable hereto, or as a waiver of an expressed or implied warranty of the Seller, unless specifically so waived by the Monogram, in writing, by an authorized representative.

**9. ACCEPTANCE / OBSOLESCENCE.** Monogram's acceptance of Products shall be subject to Monogram's final inspection after receipt at destination. Such final inspection and acceptance shall be conclusive, except as to latent defects, fraud, gross mistakes that amount to fraud, and/or the Seller's warranty obligations. Monogram requires Seller to be aware of and proactively monitor all items and material used in the manufacture of this order for impending obsolescence issues. Seller will provide immediate formal notification to Monogram as soon as a pending obsolescence issue or event is known to Seller, describing the obsolete item, reason for obsolescence, estimated date the item will no longer be available, and any proposed alternatives. Timely notification is imperative to allow sufficient time to identify alternates for the affected parts, and perform any necessary certifications, which may involve OEMs and airline regulatory agencies. Seller will use diligent efforts to minimize cost and operational impact, including the effects of interchangeability to Monogram and Customers.

**10. REJECTION.** Products that are not accepted under Article 9 above may be rejected and returned to Seller for correction, replacement, or credit, at Monogram's election. Removal, inspection, correction, rework, and transportation costs shall be at Seller's risk and expense. If Monogram elects correction or replacement, the corrected or replaced Product must be received by Monogram within forty-eight (48) hours of rejection.

**11. AUDIT AND INSPECTION.** Monogram, Customer, and/or pertinent government agencies may perform on-site audits or inspections related to Seller's performance hereunder at Seller's plant, including, but not limited to, audit or inspection of Seller's facilities, systems,

equipment, testing, data, personnel, all work-in-process and completed Products manufactured.

## **12. CHANGES**

### **(a) MONOGRAM INITIATED CHANGES.**

Monogram reserves the right at any time to make changes in specifications, drawings, delivery, schedules, material used, or work covered by this Order. If any such changes cause an increase or decrease in the cost of, or the time required for performance of this Order, an equitable adjustment shall be made in the contract price, or delivery schedule, or both, and the contract shall be modified accordingly in writing. Changes to the Product price will be limited to direct costs solely attributed to the out of scope changes and Seller shall provide documented evidence substantiating such cost, which Monogram shall have the right to audit. Monogram's employees have no authority to direct or approve any change, except by a change order, in writing, signed by Monogram's authorized representatives. Any claim by Seller for equitable adjustment under this clause must be submitted, in writing, to Monogram's authorized representative within thirty (30) days from the date notice of any such change is received by Seller. Nothing in this clause shall relieve Seller from proceeding, without delay, in the performance of this Order as changed.

**(b) SELLER INITIATED CHANGES-MONOGRAM DESIGN.** When the Seller is manufacturing to Monogram design, no deviation from the drawing and/or specification shall be made unless specifically authorized by Monogram Engineering and a duly authorized Monogram Purchasing representative and specified in writing on the relevant Order and/or contract. If the Seller wishes to propose a design change to a Monogram design, it shall be submitted via a form specified by Monogram (See "Engineering Change Request" form on Monogram Systems' web-site). In no event shall the Seller implement a change without Monogram's express written authorization.

**(c) SELLER INITIATED CHANGES-SELLER DESIGN.** When design is the Seller's responsibility, but that design requires Monogram approval prior to qualification and/or production, no change shall be made to the Product, its specification, detail drawings, or manufacturing processes at any level without written approval of Monogram Engineering and a duly authorized Monogram Purchasing representative. Seller shall inform Monogram in writing of any and all proposed changes to the Product, processes and/or tools used to make the Product, or drawings defining the Product, prior to implementing a change. This applies for both Class I changes (changes affecting form, fit, function, qualification documentation, top assembly drawings, and/or CMMs) and Class II changes (changes not affecting form, fit, function, qualification documentation, top assembly drawings, and/or CMMs). For all proposed changes, Seller shall provide all affected detail drawings, and an engineering analysis supporting the classification and impact of the change in a

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format specified by Monogram (See "Engineered Product Change Proposal" form on Monogram Systems' web-site). If Monogram disagrees with implementing a change or its classification, Monogram shall inform Seller within thirty (30) days of Seller's submittal. For Class I changes, Seller shall not implement the change without prior Monogram written approval. If such approval is granted, all part numbers and the originals of all drawings and data shall be revised accordingly. All changes initiated by Seller shall be free of charge.

**13. IMPROVEMENTS.** In the event: (a) there are any improvements conceived in the performance of the work under this Order, or incorporated in any materials made under this Order; (b) a substantial portion of the development cost is being charged by Seller directly or indirectly to Monogram; and/or (c) the Products to be made are more than merely a slight modification of an item with respect to which Seller already possesses patent or proprietary rights, then Seller grants to Monogram the right to reproduce such Products together with a royalty-free, non-exclusive, irrevocable license covering such improvement.

**14. PATENT INDEMNITY.** Seller agrees to indemnify, defend, and hold Monogram and Customers harmless from all claims, suits, actions, proceedings, awards, liabilities, damages, costs and expenses, including attorneys' fees, related to the actual or alleged infringement of any and all patent, copyright, trademark, trade name, trade secret and other intangible property rights, arising out of the manufacture, sale or use of Products by Monogram or Customers under this Order. Seller shall have no obligation under this clause with regard to any infringement arising from: (a) Seller's compliance with formal specifications issued by Monogram or Customers where infringement could not be avoided in complying with such specifications; and/or (b) use or sale of Products in combination with other items when such infringement would not have occurred from the use or sale of those Products solely for the purpose for which they were designed or sold by Seller. Monogram and/or Customers shall give prompt notice to the Seller of any action, suit or claim against it, and shall provide information and assistance, at Seller's expense, to enable Seller to defend such litigation.

**15. INDEMNITY/INSURANCE.** If this Order covers the performance of work for Monogram upon property owned or controlled by Monogram and/or Customers, Seller agrees to indemnify, defend, and hold Monogram and/or Customers harmless from all claims, suits, actions, proceedings, awards, liabilities, damages, costs and expenses, including attorneys' fees, by reason of property damage, death and/or personal injury of whatsoever nature or kind, arising out of, as a result of, or in connection with the performance of this Order. Seller shall maintain general liability and property damage insurance with adequate limits satisfactory to Monogram, and shall maintain proper automobile liability, worker's

compensation and employer's liability insurance covering all employees engaged in the performance of this Order.

**16. RESPONSIBILITY FOR PERFORMANCE.** Monogram's issuance of this Order is based, in part, on Monogram's reliance upon Seller's ability, expertise, and awareness of the intended use of the Products. Unless otherwise agreed, in writing, Seller shall supply all materials, equipment, tooling and facilities required to perform this Order.

**17. RESPONSIBILITY FOR PROPERTY/TOOLING.** Unless otherwise specified in this Order, (i) upon delivery to Seller, all materials, equipment, tooling, and facilities furnished to Seller by Monogram, or specifically paid for by Monogram (hereinafter referred to as "Property"), shall remain the property of Monogram, with the right of possession in the Seller; and (ii) the price of the Products includes the cost of any special equipment or tooling that may be obtained or made by Seller for use in the manufacture, fabrication or assembly of the Products purchased under this Order. Title to special tooling, such as gauges, jigs, fixtures, dies, molds, tools, patterns, special test equipment, and other special equipment and manufacturing aids fabricated or acquired by Seller for the production of Products ordered by Monogram shall vest in Seller; provided, however, upon request of Monogram, Seller shall transfer title to Monogram, without charge, and Monogram shall have the right to immediate possession and exclusive use thereof.

Upon Seller's completion of tooling required to produce the Products under this Order, Seller shall forward to Monogram a certified tool list, identifying all tools utilized in the production of the Products.

Seller shall use said Property only in the performance of work under this Order, unless otherwise approved in writing by Monogram prior to such other use.

Seller shall: (i) maintain tooling records to adequately account for such tooling; (ii) maintain a program for maintenance, repair, protection, or preservation of all such tooling until disposed of by Monogram, or until Seller is relieved of such responsibility by Monogram; (iii) perform a physical inventory of all tooling, not less than once annually, and furnish Monogram with a reproducible copy of the results of such inventory; and (iv) be responsible for all loss, theft, destruction or damage to such tooling until such time as Monogram may take possession, promptly notifying Monogram, in writing, upon any such loss, theft or destruction. All Property, while in Seller's custody or control, shall be kept and insured by the Seller, at Seller's expense, against loss and/or damage in an amount equal to the cost of replacement.

Seller shall promptly notify Monogram of the location of Property, if other than at Seller's plant.

Upon completion or termination of this Order, Seller shall: (i) obtain from Monogram authorized disposal instructions, prior to the return of any Property to Monogram; and (ii) if so directed, return such Property to Monogram in the condition in which it was received, except for reasonable wear and tear, and except for such

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Property reasonably consumed in the performance of this Order.

## 18. CONFIDENTIAL/PROPRIETARY INFORMATION.

All confidential and proprietary information not in the public domain, including, but not limited to, writings, drawings, equipment, tooling, models, oral disclosures, disclosed by Monogram and received by Seller, and/or learned of, or produced by Seller in connection with the performance of the work under this Order, is the sole property of Monogram and shall be held by Seller in strict confidence, at all times, and shall not be used, nor disclosed, by Seller to any third party, without the prior written consent of Monogram. The provisions of this clause shall survive the performance, completion, or termination of this Order.

**19. INTELLECTUAL PROPERTY.** Seller grants Monogram an irrevocable, non-exclusive, paid-up, worldwide license to use and have used all of Seller's confidential and proprietary information related to the Product, as necessary for Monogram to fulfill its obligations with its Customers. However, the use of such license for manufacturing purposes shall only apply in the event of Seller's nonperformance of any obligation under this Order or termination per clause 20(a) or 20(b). In the event of termination per clause 20(c), Monogram shall have the right to purchase the license for manufacturing purposes at a reasonable fee.

## 20. TERMINATION.

**(a) Non-curable Events.** Monogram may terminate any unfulfilled portion of this Order, without prior notice and without liability, upon the insolvency of Seller or the institution by or against Seller of proceedings in bankruptcy or other insolvency law, for reorganization, receivership or dissolution, and/or upon an assignment for the benefit of creditors; such occurrences shall be deemed a default in the performance of this Order.

**(b) Default.** Monogram shall have the right, at its option, to terminate this Order, in whole or in part, by giving written notice to Seller upon any default or breach in the performance of any of the provisions of this Order, if such default or breach is not remedied to the satisfaction of the Monogram within thirty (30) days after date of such notice to Seller. Upon termination, Seller shall deliver to Monogram all data, drawings specifications, reports, summaries, and other information and materials accumulated in performing this Order, whether completed or in process. Monogram may complete the work, by contract or otherwise, and Seller shall be liable for any additional costs, damages and liabilities, including attorney fees, incurred by Monogram.

**(c) Convenience.** Monogram may terminate this Order, in whole or in part, by delivering to Seller a written notice of termination specifying the extent of termination and the effective termination date. After receipt of a notice of termination, and except as directed by Monogram, the Seller shall: (i) immediately stop work as specified in the notice; (ii) place no further sub-subcontracts for materials,

services, or facilities, except as necessary to complete the continued portion of the Order; (iii) terminate sub-subcontracts to the extent they relate to the work terminated; (iv) settle all outstanding liabilities arising from such termination; and (v) complete performance of the work not terminated. Within sixty (60) days of the effective date of termination, the Seller shall submit a final termination settlement proposal to Monogram. Monogram shall pay Seller only for costs directly resulting from the terminated Order(s): (i) for Products completed and delivered to Monogram before the effective termination date, at the prices specified in the Order, on condition that the delivery date specified in the terminated Order(s) is prior to the effective termination date; (ii) for unfinished work-in-process which started prior to the effective termination date, the actual direct costs incurred by Seller (excluding overhead and profits) as determined in accordance with generally accepted accounting principles applied on a consistent basis; and (iii) for Products, the production of which has not been started at the time of the termination, the actual cost of materials purchased specifically for the Order. In all cases, costs incurred due to the Seller building ahead of the terminated Order(s) schedule will not be reimbursed

**(d) Program Termination.** Monogram reserves the right to immediately suspend or terminate this Order, without prior notice and without liability, in the event the underlying agreement between Monogram and Customer, for which this Order was placed, is terminated.

**21. ASSIGNMENT/SUBCONTRACTING.** Seller shall not, by contract, operation of law, or otherwise (a) assign any of its rights or interest in this Order, including, but not limited to, any right to monies due or to become due; (b) delegate any of its duties or obligations under this Order; or (c) subcontract all, or substantially all, of its performance of this Order to one or more third parties, without Monogram's prior written consent. No assignment, delegation, or subcontracting by Seller, with or without Monogram's consent, shall relieve Seller of any of its obligations under this Order, or prejudice any of Monogram's rights against Seller, whether arising before or after the date of the assignment, including, but not limited to, set off or recoupment.

**22. NONWAIVER AND PARTIAL INVALIDITY.** Failure or delay of Monogram to enforce, at any time, any of the provisions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver of any such provisions, rights or remedies in other instances; rather, the same shall remain in full force and effect. If any provision of this Order is, or becomes, void or unenforceable by law, the remainder shall be valid and enforceable. Monogram's rights and remedies are in addition to any other rights and remedies provided by law, in equity, or under this Order. No action by Monogram shall constitute a waiver of any such right or remedy.

**23. GOVERNING LAW.** This Order and the performance thereof shall be governed by the laws of the State of

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California, U.S.A., to the exclusion of its rules of conflicts of laws and the United Nations Convention on Contracts for the International Sale of Goods.

**24. ARBITRATION.** Any dispute, controversy, or claim arising out of or relating to this Order, which is not resolved by the parties between themselves, shall be settled by arbitration under the rules of the American Arbitration Association. The place of the arbitration shall be Los Angeles, California, and the language shall be English. Three arbitrators shall be used. Each party shall choose one arbitrator, and the two arbitrators shall choose the third arbitrator who will act as chairman. The parties shall be bound by the decision of the arbitrators, whose decision shall be final and enforceable in any court of competent jurisdiction.

**25. COMPLIANCE WITH LAWS.** Seller shall be responsible for complying with all laws including, but not limited to, any statute, rule, regulation, judgment, decree, order, permit, FAA regulation, and/or all applicable airworthiness directives applicable to Seller's performance under this Order. Seller certifies, through verification and auditing of its supply chain when appropriate, that the Products furnished to Monogram under an Order are produced in accordance with all applicable laws regarding the elimination of slavery and human trafficking. Seller further agrees to notify Monogram of any obligation under this Order, which is prohibited under any applicable environmental law, and/or any aspect of its performance which becomes (or which Seller reasonably believes will become) subject to additional environmental regulation during performance of this Order, so that alternative methods can be implemented. Seller warrants that each and every reportable chemical substance contained in the Products sold or otherwise transferred to Monogram under this Order is not on the list of toxic chemical substances, compiled and published by the Administrator of the Environmental Protection Agency, pursuant to the Toxic Substances Control Act (P.L. 94-469), and does not pose any potential threat or danger. In addition, the following Federal Acquisition Regulations are incorporated herein by this reference, except "Contractor" shall mean "Seller":

FAR 52.203-13 "Contractor Code of Business Ethics and Conduct"  
FAR 52.222-21 "Prohibition of Segregated Facilities"  
FAR 52.222-26 "Equal Opportunity"  
FAR 52.222-35 "Equal Opportunities for Veterans"  
FAR 52.222-36 "Affirmative Action for Workers with Disabilities"  
FAR 52.222-37 "Employment Reports on Veterans"  
FAR 52.222-40 "Employee Rights under the National Labor Relations Act"  
FAR 52.222-41 "Service Contract Act of 1965"  
FAR 52.222-50 "Combating Trafficking in Persons"  
FAR 52.247-64 "Preference for Privately Owned U.S.-Flagged Commercial Vessels"

**26. GOVERNMENT CONTRACTS/SUBCONTRACTS.** If this Order indicates that it is issued under a United States Government Agency prime contract or subcontract, pertinent provisions, federal laws, executive orders, and agency procurement regulations shall apply.

**27. DEFENSE ARTICLES AND/OR SERVICES.** Seller represents that (i) any Product, and the parts and components thereof, it is providing in conjunction with this Order are not currently "defense articles" as that term is defined in 22 C.F.R. § 120.6 of the ITAR, and (ii) the services that Seller is providing in conjunction with this Order are not currently "defense services" as that term is defined in 22 C.F.R. § 120.9 of the ITAR. The Seller acknowledges that this representation means that an official capable of binding the Seller knows, or has otherwise determined that such Product, and the parts and components thereof, are not currently on the United States Munitions List at 22 C.F. R. § 121.1. To the extent that such items, or any parts or components thereof, were specifically designed or modified for a military end use or end user, the Seller shall notify Monogram of this fact and shall also provide Monogram with written confirmation from the United States Department of State that such Items, and all such parts or components thereof, are dual-use Items subject to the jurisdiction of the Department of Commerce.

The Seller shall be responsible for complying with all US export laws and regulations, including but not limited to, the Export Administration Regulations, International Traffic in Arms Regulations, and Office of Foreign Assets Controls Regulations, applicable to its performance hereunder. Such compliance will include, but not be limited to, obtaining all necessary US Government approvals and licenses required to export or re-export hardware, software and technology, including technical data and technical services.

**28. SURVIVAL.** Without limiting any other survival provisions contained herein, and notwithstanding any other provision of this Order to the contrary, the representations, covenants, agreements and obligations of the parties set forth in clause 8 Warranty, clause 14 Patent Indemnity, clause 15 Indemnity/Insurance, clause 18 Confidentiality/Proprietary Information, clause 19 Intellectual Property, clause 23 Governing Law, clause 24 Arbitration, and this clause 28 Survival, as well as any representations, covenants, agreements and obligations which by their nature are intended to continue, shall survive any cancellation, termination or expiration of this Order, any assignment of this Order, or any payment and performance of any or all of the other obligations hereunder. Termination or cancellation of any part of this Order shall not alter or affect any part of this Order which has not been terminated or cancelled.

**29. ENTIRE AGREEMENT.** This Order sets forth the entire agreement and supersedes any and all other agreements, understandings and communications between Monogram and Seller and related to the subject matter of

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this Order except for any non disclosure agreement between the parties intended to survive the issuance of the Order. No amendment or modification of this Order shall be binding upon Monogram unless set forth in a written instrument signed by Monogram's duly authorized representative. The rights and remedies afforded to Monogram or Customers pursuant to any provision of this Order are in addition to any other rights and remedies afforded by any other provision of this Order, by law, in equity, or otherwise.