

8801TC

Revised November 2009

**AVTECH GENERAL PURCHASE ORDER TERMS AND CONDITIONS**

Avtech Corporation 3400 Wallingford Avenue North Seattle, Washington USA 98103-9095  
Phone (206) 695-8000 Fax (206) 695-8011 [www.avtcorp.com](http://www.avtcorp.com)

“**BUYER**” means Avtech Corporation.

“**SELLER**” means the vendor/supplier/distributor performing work and/or supplying materials, parts, assemblies, subassemblies, or services pursuant to a purchase Order issued by Buyer (physically or electronically).

**1. ACCEPTANCE.**

This Purchase Order is an offer to purchase Goods and/ or Services as set forth on the face thereof. Any of the following acts by Seller shall constitute acceptance of this Order: signing and returning a copy of this Order; delivery of any of the Goods ordered, commencement of performance or informing the Buyer in any manner of commencement of the terms set forth of the face hereof. **Any additional or different term or condition on Seller’s acknowledgement form, or otherwise communicated by Seller in accepting this Order shall be deemed to be a material alteration of this Order and is hereby objected to by Buyer. Any such term or condition shall be totally inapplicable to this Order unless specifically agreed to in a writing signed by an authorized representative of Buyer. Receipt of the Goods or Services covered by this Order will not constitute acceptance by Buyer of Seller’s terms and conditions to the extent this Order is in any way deemed to be an acceptance of a quotation or other offer by Seller. Any such acceptance is expressly conditional upon the consent of Seller to the terms and conditions of this Order.**

**2. PRICE AND DELIVERY.**

Seller shall furnish the Goods covered by this Order (the “Goods”) or the services covered by this Order (the “Services”) in accordance with the prices and delivery schedule stated on the face of this Order. If prices and / or delivery dates are not stated, Seller shall offer its lowest prices and best delivery dates, both of which shall be subject to written acceptance by Buyer, and no contract shall be deemed to have been entered into unless such written acceptance by Buyer is obtained. All prices include all applicable taxes and other government charges, including but not limited to all federal, state and municipal sales, use or excise taxes, or any customs duties.

**3. SHIPMENT.**

Shipments or deliveries (as specified in this Order) shall be strictly in accordance with quantities and schedules specified in this Order. No partial shipments shall be made unless previously authorized by Buyer in writing. If at any time it appears that Seller will not meet schedules, Seller shall promptly notify Buyer and ship by expedited routing to avoid delay to the maximum extent possible. This added cost shall be borne by Seller. Buyer may return, or store at Seller’s expense, any Goods delivered more than ten (7) days in advance of the Due Date specified for such Goods. This is in addition to other remedies as provided by law or in equity.

**4. PACKING AND SHIPPING.**

No charge shall be made by Seller for packaging or storage. In addition to the requirements in Quality Specification **8801QS**, Goods shall be packaged, marked, and otherwise prepared in accordance with good commercial practices to obtain lowest shipping rates. Goods shall be packaged in accordance with all applicable laws and regulations, including the Department of Transportation Hazardous Material Regulations. On containers, Seller shall mark handling and loading instructions, shipping information, Order number, item and account number, shipment date, and names and addresses of Seller and Buyer. An itemized packing list shall accompany each shipment.

**5. F.O.B. TITLE AND RISK OF LOSS.**

Unless otherwise specified on the face of this Order, the F.O.B. point shall be at the point of origin, and Seller shall bear all risk of loss or damage to the Goods and title shall not shift to Buyer until delivery of the Goods to the carrier. If transportation is F.O.B. destination, Seller shall bear all risk of loss or damage to the Goods, and title shall not shift to Buyer until delivery of the Goods to Buyer’s location.

**6. INVOICING AND PAYMENT.**

- a) After each shipment made or Service provided under this Order, unless otherwise arranged by Buyer, Seller shall send a separate invoice and (if applicable) a bill of lading. Payment of invoice shall not constitute acceptance of the Goods or Services and shall be subject to appropriate adjustment for failure of Seller to meet the requirements

of this Order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer against amount owed by Buyer to Seller under this Order.

- b) Unless otherwise specified, no invoice shall be issued prior to shipment of Goods, and no payment shall be made prior to receipt of compliant Goods, required specified documentation, and a correct invoice. Buyer reserves the right to take all discounts offered for payment within a specified period by Seller. Federal, state and local taxes shall be billed separately on Seller's invoices. Unless otherwise specified on the face of the Order, payment terms are net 45 days after receipt of Goods.

#### **7. INSPECTION.**

- a) All Goods may be inspected and tested by Buyer, its customers, higher tier contractors, and (in the case of Goods purchased for a U.S. Government contract or subcontract) the U.S. Government, at all reasonable times and places. If such an inspection or testing is made on Seller's premises, Seller shall provide, without additional charge, all reasonable facilities and assistance for such inspections and tests. In its internal inspection and testing of the Goods, Seller shall, if required by Buyer, use an inspection system accepted by Buyer in writing. All inspection records relating to the Goods shall be available to Buyer during the performance of this Order, and for such longer periods specified by Buyer in its acceptance of the inspection system, if any.
- b) Final inspection and acceptance by Buyer shall be at destination unless otherwise specified in this Order. Final inspection will be made within a reasonable time after receipt of Goods. Such inspection shall be in accordance with the customary established inspection procedures of the location of Buyer where the Goods are received. If rejection of a shipment would result from Buyer's normal inspection level under such procedures, Buyer may, at its option, conduct an above-normal level of inspection, up to 100% inspection, and charge the Seller the reasonable costs thereof.
- c) No inspection (including source inspection), tests, approval (including design approval), or acceptance of the Goods shall relieve Seller from responsibility for any defects in the Goods or other failures to meet the requirements of this Order, or for latent defects, fraud, such gross mistakes as amount to fraud, or Seller's warranty obligations. If the Goods are defective or otherwise not in conformity with the requirements of this Order, Buyer may, by written notice to Seller: (i) rescind this Order as to such Goods; (ii) accept such Goods at an equitable reduction in price; or (iii) reject such Goods and require the delivery of replacements. Deliveries of replacements shall be accompanied by written notice specifying that such Goods are replacements. If Seller fails to deliver required replacements promptly, Buyer may: (i) replace or correct such Goods and charge Seller the cost thereof (including cover and any incidental costs); or (ii) terminate this Order for cause as provided in Section 20(b) hereof. Rights granted to Buyer under this Section 7 are in addition to any other rights or remedies provided elsewhere in this Order or in law.

#### **8. WARRANTIES.**

- a) In addition to all other express or implied warranties, Seller warrants that the Goods will be: (i) free from defects in workmanship and materials; (ii) free from defects in design except to the extent that such Goods comply with the detailed designs provided by Buyer; (iii) suitable for the intended purposes disclosed to Seller; and (iv) in conformity with all the other requirements of this Order. These warranties, and all other warranties, express or implied, shall survive delivery, inspection, acceptance, and payment.
- b) In addition to any other rights Buyer may have, if Goods are found not to be as warranted after acceptance by Buyer, Buyer may return such Goods to Seller, at Seller's expense, for correction, replacement, or credit as Buyer may direct. Any Goods corrected or furnished in replacement shall, from date of delivery of such corrected or replacement Goods, be subject to the provisions of this Section 8 for the same period and to the same extent as Goods initially furnished pursuant to this Order.
- c) Seller's warranties (and any more favorable warranties, service policies or similar undertakings of Seller) shall be enforceable by Buyer's customers and any subsequent owner or operator of the Goods, as well as by Buyer, for a minimum of 36 months after receipt by Buyer.
- d) As to Service, in addition to any express or implied warranties, Seller warrants that it possesses the requisite expertise, facilities and equipment necessary and appropriate to perform the Services and that such Services are warranted for a period of one (1) year after the conclusion of the performance of the Services.
- e) Seller will indemnify and hold Buyer and its customers harmless against all liability and expenses including counsel fee arising from any such breach of warranty.

**9. MATERIALS AND TOOLS.**

If Buyer furnishes Seller materials or equipment (such as special dies, molds, jigs, tools, test equipment, masks, etc.) or pays for such material or equipment, title thereto shall remain or vest in Buyer, and Seller shall label, identify as "property of Avtech", maintain and preserve such material and equipment and shall dispose of it (including scrap) only in accordance with Buyer's direction. Unless otherwise authorized in writing by Buyer, Seller shall use such materials or equipment exclusively in the performance of purchase Orders for Buyer. Seller shall keep items in good working condition, fully covered by insurance and be responsible for any loss, damage, or destruction to such material or equipment, but Seller shall not include any insurance cost therefore in prices charged under this Order.

**10. PROPRIETARY INFORMATION.**

- a) All written information obtained by Seller from Buyer in accordance with this Order shall be received in confidence and shall remain the property of Buyer, and shall be used and disclosed by Seller only to the extent necessary for the performance of this Order. Unless otherwise authorized by Buyer in writing, Seller shall keep confidential all proprietary information including, but not limited to, designs, processes, specifications, reports, data and other technical or business information and the features of all parts, equipment, tools, gauges, patterns and other items furnished or disclosed to Seller by Buyer. Seller shall not use any proprietary information of Buyer to manufacture, sell or repair, refurbish, maintain or overhaul any of the Goods provided hereunder to any other person. Upon completion, cancellation or termination of this Order, Seller shall, at its own expense, dispose of all such information and items as directed by Buyer.
- b) Unless otherwise agreed to in writing, no commercial or technical information disclosed by Seller to Buyer shall be deemed confidential.
- c) In all subcontracts for performance of work related to this Order, Seller shall include provisions which provide the Buyer the same protection as provided by this paragraph.

**11. REJECTION.**

Buyer may return Goods rejected and Goods supplied in excess of quantities called for herein, to Seller, at Seller's expense, including applicable freight charges. In the event Buyer receives Goods whose defects or nonconformities are not apparent upon examination, resulting in deterioration or premature failure of its finished product, Buyer reserves the right to require replacement of such Goods, as well as payment of damages. 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 or credit against amounts that may be owed to Seller under this Agreement or otherwise.

**12. LIEN WAIVERS.**

Seller shall furnish, upon Buyer's request, waivers by Seller and all other persons entitled to assert any lien rights in connection with the performance of this Order.

**13. PATENT, COPYRIGHTS AND MASK WORK RIGHTS.**

Seller shall defend, at its own expense, any suit or claim that may be instituted against Buyer or any customer of Buyer for alleged infringement of patents, copyrights, mask work or other intellectual property rights relating to the maintenance, sales, or use of the Goods, except for any such infringement resulting from Seller's compliance with detailed designs provided by Buyer, and Seller shall indemnify Buyer and its customers for all costs, liability and damages arising out of such alleged infringement.

**14. INSURANCE AND LIABILITY FOR INJURY OR DEATH.**

Seller shall indemnify Buyer against any and all costs, loss and liability for all personal injury, wrongful death, and property damage (including but not limited to response or remedial action costs associated with damage to the environment or to natural resources), caused by the Goods or Services performed by Seller (whether performed on the premises of Seller or Buyer elsewhere), and shall defend at its sole cost and expense, any action brought against Buyer as a result of any such personal injury or property damage. Seller shall carry and maintain insurance coverage sufficient to cover the above, and upon Buyer's request, shall furnish Buyer with satisfactory evidence of such insurance.

**15. ASSIGNMENT.**

Seller shall not assign this Order or any rights under this Order without the prior written consent of Buyer, and no purported assignment by Seller shall be binding on Buyer without such written consent. No invoices may be rendered by others than the named Seller without the written consent of the Buyer.

**16. NOTICE OF LABOR DISPUTES.**

Whenever an actual or potential labor dispute delays, or threatens to delay, the timely performance of this Order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.

**17. CESSATION OF PRODUCTION.**

If production of any Goods, or the provision of any Services, is to be permanently discontinued at any time within 12 months after final delivery of such Goods or Services under this Order, Seller shall give Buyer at least 6 months prior written notice of each discontinuance, during which time Seller shall accept Orders from Buyer for a reasonable quantity of such Goods or Services.

**18. PUBLICITY.**

Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of this Order or in any manner use Buyer's name or trademarks without prior written consent of Buyer, except as may be required to perform this Order.

**19. MODIFICATIONS AND CHANGES.**

- a) No modification of this Order (including any additional or different terms in Seller's acceptance) shall be binding on Buyer unless agreed to in writing by Buyer.
- b) Buyer may, at any time, by written change Order, suspend performance of this Order, in whole or in part, make changes in the drawings, designs, specifications, method of shipment or packing, or time or place of delivery of the Goods, reschedule the Services, or require additional or diminished Services.
- c) If any such change causes 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 dates or both, and this Order shall be modified in writing accordingly. Any claim for adjustment under this Section 19 may, at Buyer's option, be deemed to be absolutely and unconditionally waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from date of receipt by Seller of the change Order. Buyer shall have the right to examine any of the Seller's pertinent books and records for the purpose of verifying Seller's claim. If cost of property made obsolete or excess as a result of a change is paid by Buyer, Buyer may prescribe the manner of disposition of such property.
- d) Buyer's engineering, technical or program management personnel are not authorized to change the Goods or Services Ordered or any other provision of this Order. No change to this Order will be binding on Buyer unless issued in writing by an authorized representative of Buyer's purchasing office.
- e) Nothing in this Section 19 shall excuse Seller from proceeding with the Order as changed, including failure of the parties to agree upon any adjustment to be made.

**20. TERMINATION.**

**In addition to Buyer's other remedies provided by law, Buyer may terminate:**

- a) **Without Cause.** Buyer may terminate, for its convenience, all or any part of this Order at any time for any reason or no reason by giving Seller at least thirty (30) days advance written notice. Any such written notice of termination shall specify the effective date and the extent of such termination. Upon receipt of such notice, Seller will stop work immediately and promptly terminate all Orders and subcontracts as they relate to this agreement. Upon such termination, Seller must submit any claim for equitable adjustment or termination to Buyer within thirty (30) days after the effective date of termination, or such claim shall be absolutely and unconditionally waived. Seller's claim may include the cost of unique inventory and work in process, and the cost of paying claims to Seller's suppliers for work directly allocable to Goods terminated. Buyer will not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this agreement. Upon payment of Seller's claim, Buyer shall be entitled to all Goods, materials and work-in-process paid for. In no event will Buyer be liable for an amount greater than the amount to be paid for the Goods on the face of this Order, less the amount of Goods already delivered and paid for.
- b) **With Cause.** If Seller fails to make delivery of Goods, or fails to perform the Services, in accordance with the delivery dates specified in this Order, or fails to perform any other provision of this Order, or so fails to make progress as to endanger performance of this Order in accordance with its terms, and does not cure such failure within ten (10) calendar days after notice from the Buyer, Buyer may (in addition to any other right or remedy provided by this Order or by law) terminate all or any part of this Order by written notice to Seller without liability and purchase substitute Goods elsewhere, and Seller shall be liable to Buyer for any excess cost, including

qualification costs, occasioned by Buyer thereby. Seller shall continue performance of this Order to the extent not terminated pursuant to this Section 20(b).

Except with respect to defaults of subcontractors at any tier, Seller shall not be liable to Buyer if the failure to perform this Order arises out of causes beyond the control and without the fault or negligence of the Seller. If failure to perform is caused by the default of a subcontractor at any tier, and if such default arises out of causes beyond the control of both the Seller and subcontractor, and without the fault or negligence of either of them, the Seller shall not be liable to Buyer unless the Goods or Services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the requirements of this Order.

If this Order is terminated as provided in this Section 20(b), the Buyer, in addition to any other rights provided herein, may require the Seller to transfer title and deliver to the Buyer (i) any completed Goods, and (ii) such partially completed Goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as the Seller has specifically produced or specifically acquired for the performance of this Order.

If, after notice of the termination of this Order "with cause," it is determined that the failure to perform is due to causes totally beyond the control and totally without the fault or negligence of the Seller, such notice of default shall be deemed to have been issued pursuant to Section 20(a) hereof, and the rights and obligations of the parties hereto shall be governed by such 20(a).

**21. WAIVER.**

The failure of the Buyer to insist upon the performance of any provision of this Order, or to exercise any right or privilege granted to the Buyer under the Order, shall not be construed as waiving such provision or any other provision of this Order, and the same shall continue in full force and effect. If any provision of this Order is found to be illegal or otherwise unenforceable by any court or other judicial or administrative body, the other provisions of this Order shall not be affected thereby, and shall remain in full force and effect.

**22. COMPLIANCE WITH LAWS.**

- a) Seller shall comply with all federal, state and local laws, ordinances, rules and regulations in the manufacture and sale of the Goods and performance of the Services, including but not limited to Executive Order 11246 as amended, the Occupational Safety and Health Act, the Truth in Negotiation Act, the Resources Conservation and Recovery Act and all applicable requirements of the Fair Labor Standards Act. Seller shall execute and deliver such documents as may be required to effect or evidence compliance.
- b) Seller will defend and hold buyer harmless from any loss, damages, or costs arising from or caused in any way by any actual or alleged violation of any federal, state, or local law, ordinance, rule, or regulation.
- c) The validity, performance, and construction of this Order shall be governed by the laws of the state shown on Buyer's address on this Order.

**23. DISPUTES.**

Any dispute arising under this Order which is not disposed of by agreement of the parties shall be decided by arbitration, except that Buyer may proceed to court directly to enforce its proprietary rights. Pending settlement or final judgment of any such dispute, Seller shall proceed diligently with the performance of this Order in accordance with Buyer's direction.

**24. EQUAL EMPLOYMENT OPPORTUNITY CLAUSE.**

The Seller performing the work required by the Order shall comply with Equal Employment Opportunity clauses Section 202 Executive Order 11246, as amended, related to Equal Employment Opportunities and implementing rules and regulations of the Secretary of Labor and Section 503 of the Rehabilitation Act of 1973, as amended, and implemented by 41CFR part 61-741 Section 401 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 and as implemented by 41 CFR part 60-250.

**25. FORCE MAJEURE.**

- a) Neither party shall be deemed in default if its performance or obligations contained herein are delayed or become impossible or impractical due to causes beyond its reasonable control, including but not limited to: acts of God, war, acts of terrorism, fire, earthquake, accidents and acts of civil or military authority. Force Majeure events may include: delays in transportation, shortages of material, failure or delay in securing applicable U.S. Government export authorization or delays by subcontractors caused by Force Majeure circumstances. Under no circumstances shall economic considerations, labor difficulties, economic impossibilities or inefficiencies delay performance or be considered a Force Majeure, unless directly attributed to acts of God, war, terrorism or acts of civil or military authority.

- b) The time for performance of any obligation shall be extended for the time period lost by reason of the delay, except that if the delay by Seller exceeds reasonable expectations of Buyer, Buyer may terminate this Order, in whole or in part, in which event both Buyer and Seller shall negotiate in good faith the payment and other terms applicable to the termination.

**26. EXPORT COMPLIANCE**

- a) Seller agrees to comply with all applicable U.S. export control laws and regulations, including but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. 120-130; and the Export Administration Act, 50 U.S.C. app 2401-2420, including the Export Administration Regulations (EAR), 15 C.F.R. 730-774.
- b) Seller agrees to notify Buyer if any deliverable under this Order is restricted by export control laws or regulations.
- c) Seller shall exercise strict control regarding the disclosure of and access to technical data, information and other items received under this Order from Buyer in accordance with U.S. export control laws and regulations, including but not limited to the ITAR. Seller agrees to undertake all necessary steps to prevent the unauthorized "deemed export" of any ITAR or EAR-controlled products and /or technical data.
- d) Seller shall include the terms of this paragraph (26(c)) in all lower-tier purchase Orders/subcontracts issued when controlled technical data (from Buyer) is provided to the lower-tier party.
- e) Seller shall maintain adequate records for export jurisdictions/ classifications (e.g. ITAR, USML category, EAR, ECCN) for all products, technology and/or services provided to Buyer and disclose such information when requested by Buyer.

**27. SURVIVAL**

Seller agrees that provisions of this Order that relate to preservation and inspection of records, warranties, indemnities, compliance with laws and intellectual property shall survive the expiration or termination of this order.