

TERMS AND CONDITIONS

(INCLUDING A LIMITED WARRANTY AND LIMITATION OF CONSEQUENTIAL DAMAGES)

IMPORTANT: THIS ORDER IS ACCEPTED SUBJECT TO THE TERMS AND CONDITIONS STATED HEREIN, WHICH TERMS AND CONDITIONS ARE MADE A PART HEREOF, EXCEPT AS EXPRESSLY MODIFIED BY MARATHONNORCO AEROSPACE, INC., ("SELLER") IN THE SECTION ENTITLED "SPECIAL TERMS." AMONG THE TERMS APPEARING HEREIN ARE A LIMITED WARRANTY AND A LIMITATION OF CONSEQUENTIAL DAMAGES.

DEFINITIONS. (a) "Agreement" shall mean the actual bargain between Buyer and Seller, the terms and conditions of which shall be all the terms and conditions contained herein and no others unless contained in a writing signed by a corporate officer of Seller.
(b) "Buyer" shall mean the individual or organization identified as Buyer on the face hereof.
(c) "Goods" shall mean the items of movable property identified as the Goods on the face hereof, which items are being sold by Seller to Buyer under the terms of this Agreement.
(d) "User" shall mean any individual, organization, partnership, corporation or other entity operating or utilizing the Goods or any device, material, or thing incorporating the Goods that has been fabricated or manufactured by Buyer, its subsidiaries, affiliates, customers or successors in possession of the Goods. The term "User" as used herein is intended to refer to the ultimate purchaser in the ordinary chain of marketing as distinguished from a manufacturer, a wholesaler, or a retail dealer.

PRICES. All prices are subject to change without notice at any time prior to acceptance of the order by Seller's home office and become firm upon Seller's acceptance of the order.

TAXES AND COST OF TRANSPORTATION. Except as may be otherwise provided on the face of this Agreement, the price reflected herein does not include any applicable federal, state or local taxes in effect on the date of the Agreement or subsequently increased, enacted, or levied, nor does it include any costs of transporting the Goods from Seller to Buyer. Buyer is solely responsible for the payment of all such taxes and costs incurred by Seller in excess of Seller's obligations therefore provided on the face of this Agreement.

DELIVERY AND RISK OF LOSS. (a) Seller shall send the Goods to Buyer by any commercially reasonable means at the address noted on the face of this Agreement, but this requirement does not impose upon Seller the duty to make delivery at that point. Seller has the option of selecting the particular route and carrier for shipment of the Goods to Buyer. Delivery of the Goods by the Seller to a carrier shall constitute delivery to Buyer. (b) The risk of loss with respect to the Goods shall pass to Buyer upon their delivery by Seller to a carrier for transportation to the Buyer. In no case shall Seller be liable for damages, losses, delays or forwarding charges. No loss, injury or destruction of the Goods subsequent to their delivery to a carrier for transportation to Buyer shall release Buyer from any obligations with respect to the Goods, including without limitation the obligation to pay for them at the price reflected on the face of this Agreement. (c) Seller reserves the right to make deliveries in installments. Partial shipment will be billed as made and payments therefor are subject to the terms of payment noted below. All delivery indications are approximate and are dependent in part upon prompt receipt of all necessary information to service an order. Seller reserves the right to allocate inventories and production when such allocations become necessary.

TERMS OF PAYMENT. All payments for shipments are due net thirty (30) days from the date of invoice whether or not Buyer has inspected the Goods offered.

INSPECTION. (a) Buyer shall inspect the Goods immediately upon their arrival at Buyer's address as reflected on the face of this Agreement and shall within thirty (30) days of their arrival give notice to Seller of any matter or thing which Buyer claims makes the Goods non-conforming and is the basis for Buyer's rejection of the Goods. Failure of Buyer to give such written notice within the specified time shall constitute irrevocable acceptance of the Goods. (b) Expenses of inspection must be borne by Buyer in any event.

CANCELLATION. ALL ORDERS ACCEPTED BY SELLER SHALL BE FIRM. NO NOTICE OF CANCELLATION OR TERMINATION, NOR ANY OTHER SIMILAR NOTICE, SHALL OPERATE TO RELIEVE BUYER FROM ANY OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO ACCEPT TENDERS OF CONFORMING GOODS AND PAY FOR THEM AT THE PRICE STATED HEREIN, WITHOUT THE PRIOR WRITTEN CONSENT OF SELLER, WHICH CONSENT MUST BE CONTAINED WITHIN A WRITING SIGNED BY A CORPORATE OFFICER OF SELLER.

SET-OFF. Seller shall be entitled at any time to set off any sums owing by Buyer to Seller or to any of Seller's affiliates against sums payable by Seller in connection with this Agreement or the Goods covered thereby.

FORCE MAJEURE. If any performance of Seller under this Agreement is prevented, hindered, delayed or otherwise made impracticable or unduly burdensome by reason of any cause beyond Seller's reasonable control (hereinafter called an "Event") including, without limitation, acts of God, wars, riots, fires, unusually severe weather, curtailment or termination of Seller's sources or supplies of energy or power, inability to obtain or delay in obtaining necessary licenses and/or permits, inability to obtain materials or supplies, acts of Buyer, its agents or representatives, delays due to shipping or transportation or changes or additions to this Agreement, strikes or other labor disputes involving Seller or its subcontractors or suppliers (if being expressly understood that Buyer shall have no right to compel Seller to settle any such strike or other labor dispute on terms unsatisfactory to Seller), which cause cannot be overcome by reasonable diligence and without unusual expense, Seller shall be excused from performance to the extent that it is necessarily prevented, hindered, delayed or otherwise made impracticable or continues to prevent, hinder, delay or otherwise make impracticable or unduly burdensome Seller's performance. Performance of any obligation excused under this paragraph shall be resumed as soon as reasonably practicable after the Event ceases.

LIMITED WARRANTY AND LIMITATION OF LIABILITY (INCLUDING LIMITATION OF CONSEQUENTIAL DAMAGES).

(a) Seller warrants that the Goods sold as new are free from defects in Seller's materials and workmanship at the date of shipment.

(b) The Warranty set forth in (a) above (the "Warranty") is EXPRESSLY MADE SUBJECT TO THE FOLLOWING PROVISIONS:

(1) The Warranty shall not apply to any Goods which have been repaired or altered by anyone other than Seller in any way so as, in Seller's judgment, to affect their stability, reliability, or performance, nor to any Goods which have been subject to unreasonable use, negligence, or accident, nor to any Goods which have not been used in accordance with Seller's printed instructions, nor to any Goods not installed or operated in compliance with Seller's specifications, nor to any Goods which have been damaged because of their use, or the use of any other materials or equipment, after Buyer has actual knowledge of such defects.

(2) The extent of Seller's liability for any breach of the Warranty shall be limited to repairing or replacing (whichever of the two Seller, in its sole discretion, shall elect) any defects in Goods attributable to Seller's workmanship or materials [at Seller's plant in Waco, Texas], with the Goods to be returned to said plant at the risk and expense of the Buyer; provided, however, that the Warranty shall not be effective unless (i) Seller receives a written claim therefor within thirty (30) days after the discovery of the defect and before expiration of the Warranty and (ii) Seller is given the opportunity to conduct the verification tests described in the next succeeding sentence. In the event a written claim is made by Buyer under the Warranty, Seller shall have the right (but not the obligation) to verify by its own representative(s) the nature and extent of the defects complained of PRIOR TO THE TIME THAT THE GOODS ARE RETURNED TO SELLER, and if in fact no breach of Warranty has occurred, the Buyer shall pay a reasonable per diem fee for and the reasonable expenses incurred by such representative(s). After the existence of a defect has been verified by Seller's representative(s) and written notice thereof has been given by Seller to the Buyer (or after Seller has in writing notified the Buyer that Seller will conduct the verification tests at Seller's plant) the Buyer shall, at its own risk and expense, return the Goods in question to Seller's plant in Waco, Texas. Seller will have no obligation whatsoever to accept delivery of any returned Goods unless the provisions set forth in this subparagraph (2) have been satisfied in full. Any Goods that are repaired or replaced by Seller pursuant to this subparagraph (2) shall be warranted for the remaining term of this Warranty. THE AFORESAID REMEDY IS EXPRESSLY AGREED TO BE THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY; accordingly, without limitation of the generality of the foregoing, Seller shall not be obligated in any event of breach of said Warranty to return any portion of the purchase price of the Goods or to give credit for any payments received.

(c) THE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES (EXCEPT OF TITLE), EXPRESS, IMPLIED (INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE) OR STATUTORY AND ALL OTHER LIABILITIES (CONTRACT, TORT, OR OTHERWISE INCLUDING, WITHOUT LIMITATION, NEGLIGENCE). SELLER MAKES NO WARRANTY WHATSOEVER, EXPRESS, IMPLIED, OR STATUTORY, TO ANY PERSON OR ENTITY OTHER THAN BUYER. IN NO EVENT WHATSOEVER SHALL SELLER BE LIABLE FOR LOSS OF PROFITS OR ANY OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES RESULTING FROM ANY DEFECTS IN THE GOODS OR ANY BREACH OF THE WARRANTY.

(d) The foregoing Warranty and limitation of liability shall apply unless otherwise agreed in writing signed by Buyer and by a corporate officer of Seller.

(e) AS TO STATIC INVERTERS/CONVERTERS ONLY: The warranty period is 24 months after installation of the static inverter/converter in the aircraft, not to exceed 30 months after the date the static inverter/converter was shipped from the factory. THE WARRANTY RUNS IN FAVOR ONLY OF A BUYER WHO PURCHASES THE STATIC INVERTER/CONVERTER FOR COMMERCIAL OR INDUSTRIAL RESALE AND/OR A BUYER WHO PURCHASES THE STATIC INVERTER/CONVERTER FOR ITS OWN COMMERCIAL OR INDUSTRIAL USE. NO WARRANTY OF ANY NATURE, EXPRESS OR IMPLIED, IS MADE TO ANY "CONSUMER" AS THAT TERM IS DEFINED BY SECTION 101 OF THE MAGNUSON-MOSS WARRANTY, FEDERAL TRADE COMMISSION IMPROVEMENT ACT. AS SUCH, THE MAGNUSON-MOSS WARRANTY ACT IS NOT APPLICABLE TO THIS SALE.

(f) AS TO ALL OTHER GOODS: The Warranty shall apply only in favor of Buyer and shall expire on the last day of a period of six months commencing on the date of delivery of the Goods by Seller to Buyer UNLESS on or before the last day of such six month period the Buyer or any of its subsidiaries, affiliates, customers or successors in possession of the Goods deliver the Goods, either separately or as part of any device, material or thing manufactured or fabricated by Buyer, its subsidiaries or affiliates, customers or successors in possession of the Goods, to a User, in which event the Warranty shall expire on the last day of a period of (i) one (1) year for standard products or (ii) two (2) years for superpower products, commencing on the date of delivery of the Goods to such User.

WAIVER. The rights and remedies herein reserved to Seller shall be cumulative and in addition to any other rights and remedies provided by law. The failure of Seller to insist upon strict performance hereof shall not constitute a waiver or estoppel against asserting the right to require such performance in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later breach of a similar nature.

INDEMNITY. Buyer shall protect, indemnify and hold Seller free and harmless from and against any and all liability and any and all losses, costs (including, without limitation, attorney's fees), claims and courses of action in favor of any and all persons (which term shall include, without limitation, individuals, corporations, partnerships, organizations and other legal entities) whatsoever on account of injury to or death of any such persons and/or damage to or loss of the property of such persons caused by or arising out of the use or operation of the Goods or any device, material, or thing of which the Goods are made a part of, or to which the Goods are attached, or within which the Goods are enclosed, while in Buyer's possession or subsequent to any transfer of possession to any third party, regardless of whether Seller and/or others may be wholly, partially or solely negligent or otherwise at fault.

NOTICE. Any notice provided for under this Agreement must be given in writing. Notices shall be deemed to have been duly given at the time of receipt if delivered by hand or communicated by electronic transmission, or, if mailed, three (3) days after mailing registered or certified mail, return receipt requested, with postage prepaid.

FORM, FORMATION AND READJUSTMENT OF THE AGREEMENT. (a) This Agreement constitutes the entire Agreement between the parties, incorporating all prior negotiations and understandings relating to the subject matter hereof, whether written or oral. (b) The terms and conditions of this Agreement shall not be modified or rescinded except by written instrument executed by a corporate officer of Seller. (c) SELLER'S ACCEPTANCE OF BUYER'S OFFER TO PURCHASE IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, NOTWITHSTANDING ANY DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY WRITING SUBMITTED OR TO BE SUBMITTED TO SELLER BY OR ON BEHALF OF BUYER RELATING TO THE SUBJECT MATTER HEREOF. Buyer's assent will be conclusively established either by Buyer's execution of the Acceptance Copy of this Agreement or by Buyer's acceptance of any Goods shipped under this Agreement. (d) Seller hereby objects to any and all different and/or additional terms contained in any writing submitted or to be submitted to Seller by or on behalf of Buyer relating to the subject matter hereof, and under no circumstances are any such different and/or additional terms to be considered a part of the contract between Buyer and Seller.

GOVERNING LAW. The Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with, the substantive laws of the State of Texas, without regard to the otherwise applicable Texas choice of law rules.

PATENTS.

(a) AS TO STATIC INVERTERS/CONVERTERS ONLY: Buyer agrees that Seller has the right to defend or, at its option, to settle, and Seller agrees at its own expense to defend or, at its option, to settle any claim, suit, or proceeding brought against Buyer under this Agreement. Seller agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against Buyer on such issue in any such suit or proceeding defended by Seller. Buyer agrees that Seller, at its sole option, shall be relieved of the foregoing obligations unless Buyer notifies Seller promptly in writing of any such claim, suit, or proceeding and, at Seller's expense, gives Seller proper and full information and assistance to settle and/or defend any such claim, suit, or proceeding. If the Good, or any part thereof, furnished by Seller to Buyer becomes, or in the opinion of Seller may become, the subject of any claim, suit, or proceeding for infringement of any United States patent, or in the event of an adjudication that such Good or part infringes any United States patent, Seller may at its option and its expense: (1) procure for Buyer the right under such patent to use, lease, or sell, as appropriate, such Good or part; (2) replace such Good or part; or (3) modify such Good or part; or (4) remove such Good or part and refund the aggregate payments and transportation costs paid therefor by Buyer less a reasonable sum for use, damage, and obsolescence. Seller shall have no liability for any infringement arising from (i) the combination of such Good or part with any other product or part, whether or not furnished to Buyer by Seller or (ii) the modification of such Good or part unless such modification was made by Seller or (iii) the use of such Good or part in practicing such process, or (iv) the furnishing to Buyer of any information, data, service or application assistance. Buyer shall hold Seller harmless against any expense, judgment, or loss for infringement of any United States patent or trademark which results from Seller's compliance with Buyer's designs, specifications or instructions. Seller shall not be liable for any costs or expenses incurred without Seller's written authorization and in no event shall Seller pay Buyer for the allegedly infringing Good or for the Good incorporating the allegedly infringing part, exclusive of any refund under Option (4) above. Seller shall in no event be liable for loss of use for incidental, indirect, or consequential damages, whether in contract or in tort. The foregoing states the entire warranty by Seller and the exclusive remedy of Buyer, with respect to any alleged patent infringement by such Good or part. No sale or lease hereunder shall convey any license or implication, estoppel or otherwise, under a proprietary or patent right of Seller to practice any process with such Good or part, or for the combination of such Good or part with any other product or part.

(b) AS TO ALL OTHER GOODS: Seller hereby grants to Buyer a non-exclusive, royalty-free license to use, lease, sell or otherwise dispose of (but not to duplicate or manufacture) the Goods under any United States or foreign patents to which the Seller possesses the right to grant such a license. Seller expressly negates and excludes any warranty that the Goods are delivered free and clear of any claim by any third person by way of infringement or the like, including, but not limited to, any claim of infringement of any United States or foreign patent, copyright, industrial design, trademark or service mark; and the Seller assumes no liability to Buyer, a User or any party leasing, selling, or otherwise disposing of any of the Goods acquired from Buyer, for any costs, expenses, losses, or damages (whether incidental, consequential, or otherwise) arising out of any such claim of infringement by reason of the Buyer, the User or such party leasing, selling or otherwise disposing of the Goods, either alone or in combination with other things. In respect to Goods manufactured in accordance with plans, specifications, or directions furnished by Buyer, Buyer shall defend and indemnify and hold Seller harmless from any and all infringement claims or the like arising out of the use, lease, sale, or other disposal of the Goods.