



Avstar Fuel Systems, Inc. Purchase Order Terms & Conditions

1. Acceptance of Terms and Conditions:

A. These Purchase Order Terms and Conditions may be communicated to Seller by hard copy, by electronic means, or by any other method chosen by Avstar. By accepting any Avstar Purchase Order, including by supplying the goods ordered, Seller accepts all of the following terms and conditions, which are part of all Avstar Purchase Orders.

B. Avstar expressly limits its offer to contract under its purchase orders to these Purchase Order Terms and Conditions and the specifications contained in the Avstar Purchase Order at issue, and expressly rejects any terms and conditions of sale that may be submitted by Seller in acknowledging or accepting Avstar's Purchase Order.

C. These Purchase Order Terms and Conditions, together with the Avstar Purchase Order, constitute the complete, final and entire contract between Avstar and Seller with respect to the goods specified in the Avstar Purchase Order.

D. Any reference to a Seller quotation shall be deemed to be for information purposes only and shall not be construed as acceptance of the Seller's terms and conditions.

E. Any change in the terms and conditions of Avstar's Purchase Order or these Purchase Order Terms and Conditions shall be binding on Avstar only if made by a written revision to the Avstar Purchase Order or these Purchase Order Terms and Conditions signed by an authorized representative of Avstar.

2. Packing and Shipment:

A. Deliveries shall be made without charge for boxing, carting or storage unless otherwise specified. Goods shall be suitably packed to insure against damage from weather or transportation and shall be marked and shipped in accordance with common carrier tariffs to permit application of the lowest transport rate. No additional charge shall be made to Avstar for such packing, marking, shipping and freight.

B. Avstar's Purchase Order number must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each shipment showing Avstar's Purchase Order number, item number and description of goods. Shipping receipts, original bills of lading, express receipt and air bills shall be sent to Avstar on the date the goods are shipped.

C. Except as otherwise provided in these Purchase Order Terms and Conditions, the expense of returning good, for whatever reason, shall be borne by Seller with the title and risk of loss passing to Seller at Avstar's facility.

3. Delivery:

A. Time is of the essence. Deliveries shall be made both in quantities and at times in accordance with Avstar's delivery schedule requirements. Title and risk of loss shall pass to Avstar upon acceptance at Avstar's facility.

B. Avstar is not obligated to accept any goods provided by Seller in excess of Avstar's Purchase Order. Any overshipment may be returned to Seller at Seller's risk and expense.

C. Avstar may from time to time change delivery schedules or direct temporary suspension of scheduled shipments by notifying Seller in writing. In additions, Avstar has the right to cancel its Purchase Order in whole or in part from time to time by modifying the Purchase Order in writing and notifying Seller of the change. In no event does Avstar have

any liability for loss of anticipatory profits of Seller or Seller's suppliers. Nothing in this clause shall excuse the Seller from proceeding with the delivery schedule or Purchase Order as modified.

D. If, because of failure of Seller to meet the schedule requirements of the Purchase Order, Avstar finds it necessary to require shipment of any of the products covered by the Purchase Order by a method other than originally specified by Avstar, Seller will be solely responsible for the additional expense, if any, by which the cost of the more expeditious method of transport exceeds the cost of the method of transport originally specified.

E. Seller is responsible for all other damages of any kind incurred or suffered by Avstar and by the ultimate purchasers or users of the goods proximately caused by any delay of seller beyond the scheduled delivery date. Avstar may from time to time in advance of shipment dates, and at Avstar's expense, direct that an alternate mode of transportation be used and Seller will promptly comply with such direction.

F. Any shipment that arrives at Avstar's facility prior to the Purchase Order authorized delivery date will be refused and returned to Seller at Seller's risk and expense or, at the sole option of Avstar will be received and stored by Avstar at Seller's sole expense and risk of loss until the Purchase Order authorized delivery date or until such earlier date, if any, as of which Avstar elects to forego further objection to the shipment's premature delivery. Payment terms do not take effect until such time as Avstar has accepted delivery of any shipment.

4. Avstar Payment Terms: Net 45 days after receipt of complete order at Avstar unless otherwise specified on the Avstar Purchase Order.

5. Excusable Delays:

A. Subject to this Section 5, neither Avstar nor Seller is liable for delays in the performance of an Avstar Purchase Order arising out of causes beyond the control and without the fault or negligence of the delayed party. Such causes include, but are not limited to, acts of God or the public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, strikes and freight embargoes.

B. In the event of a failure of Seller to perform hereunder arising from any of the causes or events set forth in this section, Avstar will be entitled to obtain products or services covered by Avstar's Purchase Order elsewhere for the duration of such failure and to reduce the quantity or amount of products or services ordered from Seller under Avstar's Purchase Order by such amount without any obligation to Seller. If at any reason Seller has reason to believe that deliveries will not be made as scheduled, notice setting forth the cause of delay will be given immediately to Avstar.

C. If Seller does not make deliveries as scheduled or fails to perform any of the other provisions of the Avstar Purchase Order or these Purchase Order Terms and Conditions, or so fails to make progress as to endanger performance of Avstar's Purchase Order in accordance with its terms or breaches any of the terms hereof for any cause not covered by this section, Avstar is entitled to obtain goods or services covered by its Purchase Order and Seller will be liable to Avstar for the amount, if any, by which the cost of elsewhere exceeds the cost specified in Avstar's Purchase Order.

6. Conformance of Goods: Seller shall notify Avstar of any out-of-specification condition of any goods proposed to be furnished under Avstar's Purchase Order. Seller shall obtain written approval from Avstar prior to shipment of any nonconforming goods.

7. Inspection:

A. All goods ordered are subject to final inspection and approval at destination by Avstar notwithstanding certification of conformance by Seller, prior payment, or inspection at source, it being expressly agreed that none of these events shall constitute final acceptance.

B. Avstar, without limitation to its other rights under the Purchase Order, may reject any goods which contain defective materials or workmanship, or do not conform to specifications, blueprints, drawings, samples or other descriptions furnished or specified by Avstar. Rejected goods may be returned at Seller's risk and expense at the full invoice price plus incoming and return transportation charges, if any, and no replacement by Seller of defective goods shall be made unless specified in writing by Avstar. Any replacement goods furnished by Seller with Avstar's approval shall be new and shall meet all requirements of Avstar's Purchase Order.

C. Acceptance of any item shall not be deemed to alter or affect the obligations of Seller or the rights of Avstar under the terms of the Purchase Order, including, without limitation, Section 8 below.

D. If Avstar reasonably determines that additional work is necessary to cause any goods to come within warranties hereunder expressed, Avstar may elect to perform such work and supply such materials as may be necessary or appropriate therefore, all at the expense of Seller, and performance of such work by Avstar shall in no way invalidate, waive or cause Avstar to waive by election any other remedy at law or in equity whatsoever.

8. Warranty:

A. Seller expressly warrants that all goods and work covered by the Purchase Order will conform to the specifications, blueprints, drawings, samples and other descriptions furnished or specified by Avstar and will be merchantable, of good material and workmanship and free from defect.

B. Seller further expressly warrants that all goods covered by the Purchase Order that are the product of Seller or are in accordance with Seller's specifications or design shall be fit and sufficient for the purposes intended by Avstar and will be safe when applied to their intended use in the usual and customary manner.

C. The warranties and remedies provided for in these Purchase Order Terms and Conditions shall be in addition to those expressed or implied by law and shall remain effective notwithstanding the acceptance of the goods by Avstar, its successor and assignees, or customers and users of the goods, and shall survive design and test approvals, inspection, acceptance and payment.

D. Seller is liable for and will save Avstar harmless any loss, damage or expense whatsoever that Avstar may suffer as a result of Seller's breach of any of these warranties, including, but not limited to replacement (if Avstar so elects) of any nonconforming goods, reimbursement of all costs incurred by Avstar in connection with any product recall, retrofit, inspection, rework, disassembly or reassembly, and payment of any other costs or expenses resulting from Seller's breach.

9. Intellectual Property/Confidential Information:

A. Seller agrees to indemnify and hold harmless, protect and defend Avstar, its successors, assigns, customers and those selling or using Avstar products from and against all loss, damage, liability, claims, demands and suits at law or in equity arising from sale or use of the goods sold by Seller to Avstar for actual or alleged infringement of any letters patent, copyright, trademarks or other intellectual property rights, whether foreign or domestic, unless and only to the extent said goods are produced in accordance with the designs or specifications furnished by Avstar.

B. Information, including drawings and data submitted at any time by Seller to Avstar relating to material covered by this order, is not submitted in confidence and may be used by Avstar in any way in the conduct of its business. Seller's rights with respect to use of such information by Avstar its successors, assigns, licensees or affiliates, are limited to any valid patent rights of Seller with respect to goods covered by this Purchase Order.

10. Charge-Backs:

Supplier non-conforming material may cause scrap, sorting, Avstar customer returns, and/or warranty claims. If it is determined by Avstar in its sole discretion that a supplier's non-conforming product is the cause of these additional costs, Seller is subject to be debited for cost recovery.

11. Changes:

A. Avstar has the right to cancel this Purchase Order in whole or in part from time to time by modifying this Purchase Order in writing and notifying Seller of the change. In no event does Avstar have any liability for loss of anticipatory profits of Seller or Seller's suppliers. Nothing in this clause shall excuse the Seller from proceeding with this Purchase Order as changed.

B. Seller may not make any changes in the design or composition of any supplies ordered hereunder without the prior approval of Avstar. Seller shall notify Avstar of any requested design changes by in writing. Approval shall be evidenced by Avstar's revised Purchase Order incorporating the change and the related drawing or other technical data as may be specified by Avstar, and may be granted, withheld or conditioned in Avstar's discretion.

12. Cancellation: Avstar reserves the right to cancel all or any part of the Purchase Order if Seller does not make delivery as specified in the schedules, if Seller fails to perform any of the other provisions of the Purchase Order, or so fails to make progress as to endanger performance of Avstar's order in accordance with its terms, or if Seller breaches any of the terms hereof, including the warranties of Seller. Avstar also has the right to terminate its Purchase Order or any part thereof in the event of the insolvency of Seller, appointment of a receiver or trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors.

13. Termination for Convenience: Avstar may by notice in writing direct Seller to terminate its Purchase Order, or work under the Purchase Order, in whole or in part at any time and such termination shall not constitute a default. If Avstar's Purchase Order is for services or specially-produced goods, in the event of such termination (a) Seller will be reimbursed for actual, reasonable and substantiated costs incurred prior to the date of termination, plus a reasonable profit for work performed to date of termination, and (b) Seller and Avstar will negotiate cost to be reimbursed and the disposition of any work in progress. Claims by the seller under contract must be made within 30 days from the date the claim arises or within such longer period as Avstar may allow. Seller's obligations under the warranty, intellectual property, and confidentiality provisions survive any termination. The provisions of this clause do not limit or affect the rights or remedies of Avstar stated in other clauses of these Purchase Order Terms and Conditions or provided by law in the event of the default or breach by Seller.

14. Construction of Contract and Avstar's Rights:

A. Avstar's Purchase Order and the Purchase Order Terms and Conditions incorporated therewith are governed and construed according to the laws of the State of Florida without application of its conflict of laws provisions.

B. All rights and remedies of Avstar as are herein specified are cumulative and additional to any other or further rights and remedies provided in law or equity.

C. Avstar is entitled at all times to set off any amount owing at any time from Seller to Avstar against any amount payable at any time by Avstar in connection with its Purchase Orders.

D. The failure of Avstar to enforce at any time any of the provisions of its Purchase Order Terms and Conditions or to exercise any option herein provided or to require at any time performance by Seller of any of the provisions herein shall not in any way be construed to be a waiver of any provisions nor in any way to affect the validity of these Purchase Order Terms and Conditions or any part thereof, or the right of Avstar thereafter to enforce each and every such provision.

E. Seller shall indemnify and hold Avstar harmless from and against all liabilities, losses and incidental damages and expenses,

including Avstar's reasonable attorney fees, resulting from the breach of any of the terms and conditions hereof, whether negligent or otherwise, specifically including, but not limited to, the breach of any of Seller's warranties.

F. Seller and Avstar agree that all warranties made hereunder explicitly extend to the future performance of the goods covered by Avstar's Purchase Orders and agree that a cause of action for breach of warranty made hereunder will accrue when the breach is discovered rather than when the goods are tendered.

15. Compliance with Applicable Laws: Seller warrants that the goods to be furnished and the services to be performed under Avstar's Purchase Order comply with all applicable federal, state and local laws and Avstar may suffer as a result of Seller's breach of this or any other warranty.

16. Federal, State and Local Taxes:

A. Unless otherwise specified, the subject material of Avstar's Purchase Order is exempt from federal excise tax.

B. Unless otherwise specified, the subject material of Avstar's Purchase Order is for use in manufacturing or resale and is exempt from sales and use tax.

C. All prices stated herein include all federal, state, and local taxes that may be levied or assessed as a result of Avstar's Purchase Order, or are otherwise applicable to Avstar's purchase.

17. Liability for Injury or Damage:

A. Seller shall indemnify, hold harmless, and defend Avstar from and against any and all damages, liabilities, losses, claims, diminution in value, obligations, liens, assessments, judgments, fines, penalties, reasonable costs and expenses (including, without limitation, reasonable fees of counsel representing Avstar), as the same are incurred, of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense, or settlement of the foregoing) that may be sustained or suffered by Avstar based upon, arising out of, or by reason of any product liability claim asserted against Avstar relating to goods sold to Avstar by Seller.

B. Seller is required to provide evidence of product liability insurance coverage satisfactory to Avstar in its sole discretion.

18. Avstar's Proprietary Information: Any information that Seller receives or otherwise has access to incidental to or in connection with Avstar's Purchase Order (the "Confidential Information") shall be and remain the property of Avstar. Confidential Information may only be used to the extent necessary to perform Avstar's Purchase Order and Seller shall not disclose Confidential Information to any third party, except to its agents and employees as necessary to perform the Purchase Order. In no event shall Seller acquire any right, title or interest in and to any product or process information, including related know how, either existing or developed during the course of the business relationship with Avstar, and in no event shall Seller acquire any right, title or interest in and to any materials or information provided to it by Avstar.

19. Addenda: In the event an addendum is attached to the Purchase Order, such addendum is hereby made a part of Avstar's Purchase Order and shall have equal importance to the terms and conditions set forth herein. IN the event that any such addendum contains terms and conditions that conflict with any of the terms and conditions set forth herein in such a way that they cannot be construed together, then the provision contained in the addendum shall control over the provision contained in the terms and conditions set forth herein.

20. Disputes/Governing Law:

A. If any dispute between Avstar and Seller arises under a Purchase Order or these Purchase Order Terms and Conditions, Seller agrees to proceed with the performance of the Purchase Order, including the delivery of goods. In the event of resolution of the dispute in favor of Seller the Purchase Order will be equitably adjusted to reflect such resolution.

B. The state courts of Florida located in Palm Beach County, Florida, and the federal courts located in West Palm Beach, Florida, as applicable, shall have exclusive jurisdiction to adjudicate any dispute arising out of Avstar Purchase Orders. Avstar and Seller hereby consent to the personal jurisdiction of, and laying of venue within the foregoing courts, and hereby knowingly and voluntarily waive any objection or defense to suit in such courts based upon lack of personal jurisdiction, venue or *forum non conveniens*.