

# TERMS AND CONDITIONS

## AVALCO TERMS AND CONDITIONS

**1. TITLE, RISK OF LOSS AND SHIPMENT:** TITLE TO AND RISK OF LOSS OF ALL GOODS SOLD HEREUNDER BY AVALCO CORPORATION (HEREIN "AVALCO"), SHALL PASS TO BUYER UPON DELIVERY AND POSSESSION OF THE PRODUCT.

**2. DELIVERY AND INSPECTIONS:** DELIVERY OF GOODS HEREUNDER SHALL BE DEEMED TO HAVE BEEN COMPLETED UPON SHIPMENT OF GOODS TO BUYER. IF, UPON RECEIPT OF THE GOODS BY BUYER, THE GOODS SHALL APPEAR NOT TO CONFORM TO THIS ORDER, BUYER SHALL NOTIFY AVALCO OF SUCH CONDITION AND AFFORD AVALCO A REASONABLE OPPORTUNITY TO INSPECT THE GOODS AND MAKE ANY APPROPRIATE ADJUSTMENT REPLACEMENT. SUCH NOTICE SHALL TAKE PLACE WITHIN THIRTY (30) DAYS AFTER RECEIPT OF GOODS BY BUYER WHERE SUCH NONCONFORMITY COULD HAVE BEEN DETECTED UPON REASONABLE INSPECTION.

**3) EXCLUSIVE WARRANTY:** IN THE EVENT THAT GOODS SHIPPED HEREUNDER DO NOT CONFORM TO THE ORDER, AND WHERE BUYER HAS COMPLIED WITH THE NOTICE AND SHIPPING REQUIREMENTS SET FORTH IN PARAGRAPH 2 ABOVE, AVALCO SHALL EITHER REPAIR OR REPLACE, AT AVALCO 'S ELECTION, GOODS OR PARTS RETURNED TO AVALCO WHICH ARE SHOWN TO AVALCO 'S REASONABLE SATISFACTION TO HAVE BEEN DEFECTIVE.

**4) EXCLUSION OF LIABILITIES:**

(a) DISCLAIMER AND RELEASE: THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF AVALCO SET FORTH HEREIN ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER " WARRANTIES, OBLIGATIONS AND LIABILITIES OF AVALCO AND ALL OTHER RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST AVALCO, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY NONCONFORMANCE, DEFECT, OR DANGEROUS CONDITION IN ANY GOODS SOLD HEREUNDER, INCLUDING BUT NOT LIMITED TO (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY OBLIGATION LIABILITY, RIGHT, CLAIM OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM STRICT LIABILITY OR FROM THE NEGLIGENCE OF SELLER (WHETHER ACTIVE, PASSIVE OR IMPUTED); AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY AIRCRAFT

(b) EXCLUSION OF CONSEQUENTIAL DAMAGES: UNDER NO CIRCUMSTANCES SHALL AVALCO HAVE ANY OBLIGATION OR LIABILITY, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE) OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, DIRECT, INDIRECT, ECONOMIC OR STATUTORY CIVIL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF USE, REVENUE OR PROFIT WITH RESPECT TO ANY NONCONFORMANCE OR DEFECT IN ANY GOOD SOLD HEREUNDER.

(c) INDEMNITY: IF BUYER MAKES A CLAIM AGAINST A THIRD PARTY FOR DAMAGES OF THE TYPE EXCLUDED BY PARAGRAPHS A AND B, BUYER SHALL INDEMNIFY AND HOLD HARMLESS AVALCO FROM AND AGAINST ANY CLAIM OR LIABILITY TO SUCH THIRD PARTY FOR CONTRIBUTION OR INDEMNITY, INCLUDING COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES) INCIDENT THERETO OR INCIDENT TO SUCCESSFULLY ESTABLISHING THE RIGHT TO INDEMNIFICATION. THIS INDEMNITY SHALL APPLY REGARDLESS OF WHETHER OR NOT SUCH DAMAGES WERE OCCASIONED IN WHOLE OR IN PART BY THE NEGLIGENCE OF AVALCO WHETHER ACTIVE, PASSIVE OR IMPUTED.