

ZEPHYR SOLUTIONS PURCHASE ORDER TERMS AND CONDITIONS

- (1) **Complete Agreement.** This Purchase Order, all specifications, schedules, exhibits, riders, agreements or other writings which may be attached hereto or provided for herein, or pursuant to which this Purchase Order has been issued, set forth the complete and final agreement between Purchaser (Zephyr Solutions) and Seller in respect of the subject matter hereof. No changes, additions, amendments or modifications of or supplements to provisions of this Purchase Order will be valid and binding upon Purchaser unless in writing and signed by an authorized representative of Purchaser. In the event of any inconsistency between these Terms and Conditions and the provisions on the face hereof or any other writing described in the first sentence hereof, the provision contained on the face hereof shall control. Seller's acceptance or, at the election of Purchaser, Seller's commencement of performance of this Purchase Order shall constitute acceptance by Seller of all the terms and conditions of this Purchase Order. These Terms and Conditions will not be modified by any acknowledgement, confirmation or acceptance issued by Seller which are hereby objected to and rejected.
- (2) **Definitions.** The term "Products" shall mean and include the cylinders, supplies, articles, equipment, structures, work and/or services covered by this Purchase Order. The term "Purchaser" shall include any parent, subsidiary, sister or affiliated company of Purchaser. "Purchaser's Property" shall include all cylinders, equipment, tools, dies, and other property of Purchaser. "Technical Information" shall include, but not be limited to, any drawings, plans, specifications, blueprints, software, equipment designs, or other information furnished to Seller by Purchaser for, or in connection with, the performance of this Purchase Order.
- (3) **Product Warranty.** Seller warrants to Purchaser and Purchaser's customer's that (the "***Product Warranty***") all Products: (a) conform in all respects to the specifications provided to Seller by Purchaser (together, and as hereafter modified or supplemented by mutual written agreement of the Purchaser and Seller, the "***Specifications***"), (b) are manufactured, packaged and sold in compliance with all applicable federal, state and local laws and regulations and good manufacturing practice (including making available all Material Safety Data Sheets), (c) conform with Purchaser's quality standards, and (d) are merchantable (as such term is defined in the Uniform Commercial Code as in effect the State of Ohio) and free from defects, latent or otherwise, in design, materials and workmanship. The Product Warranty (i) is in addition to all other warranties, express, implied, statutory and common law, (ii) survives Seller's delivery of the Products, Purchaser's receipt, inspection, acceptance, use of the Products and payment for the Products, and the termination or expiration of this Agreement, and (iii) ensures to the benefit of Purchaser and its successors and assigns and the users of Purchaser's or its customers' products. If any Products do not comply with the foregoing warranties, Purchaser may, at its sole option, and in each case at Seller's sole expense: (a) reject such Products; (b) require Seller to repair or replace such Products as necessary to render them in conformance with the foregoing warranties, and consistent with Purchaser's time schedule; (c) return such Products and receive a full refund of the contract price; or (d) make any corrections required to cause such Products to fulfill the foregoing warranties and charge Seller for the costs incurred by Purchaser thereby. Seller shall reimburse Purchaser for all costs, damages and losses, foreseeable or not, incurred by Purchaser in connection with a breach of the foregoing warranties (including transportation, storage, administrative, and other incidental expenses of Purchaser).
- (4) **Shipment and Delivery.** Delivery dates are firm and TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY. Seller will promptly notify Purchaser in writing if Seller anticipates difficulty in complying with a required delivery date and will use all commercially reasonable efforts to meet the required delivery date. Purchaser has no obligation to accept deliveries that are not made on the required delivery date. If Seller fails to meet a required delivery date, Purchaser may procure replacement products or services. Seller will be responsible for all costs incurred by Purchaser as a result of early or late deliveries. Seller shall not ship excess quantities without Purchaser's prior approval. Purchaser shall not be obligated to accept untimely, excess or under shipments and such shipments in whole or in part may, at Purchaser's option be returned to Seller, or held for disposition at Seller's expense and risk. Seller shall comply in all respects with any delivery requirements established by Purchaser or that may be required at a Delivery Location, provided that Seller is notified in advance of any such requirement(s). Seller shall properly pack, mark and ship Products as instructed by Purchaser and otherwise in accordance with applicable Law and industry standards. If Seller does not comply with any of its delivery obligations under this Purchase Order, Purchaser may, in Purchaser's sole discretion and at Seller's sole cost and expense, (a) approve a revised Delivery Date, (b) require expedited or premium shipment, or (c) cancel the applicable Purchaser Order. Title to all Seller Cylinders shall remain with the Seller at all times. Seller is responsible for all damages to Purchaser cylinders. If a cylinder is damaged beyond repair, Seller shall pay Purchaser full replacement value of such cylinder. If a cylinder is damaged and can be repaired (as determined by Purchaser) then Seller shall pay Purchaser the actual cost of such repair.
- (5) **Termination.** Unless Seller's failure to make timely delivery of the Products is excused in accordance with the provisions of paragraph 6 hereof, Seller's failure to make timely delivery, or Seller's breach of any of the other terms and conditions of this Purchase Order, shall constitute sufficient cause for Purchaser, at its option, to terminate this Purchase Order either in whole or in part and to charge Seller for any damages or losses Purchaser may sustain as a result of Seller's default or purchase replacement Products and charge Seller excess costs incurred by Purchaser in obtaining such replacement Product. Any failure by Purchaser to exercise this option with respect to any installment shall not constitute a waiver with respect to subsequent installments. In the event Seller becomes insolvent or makes a transfer for the benefit of creditors or if bankruptcy or any other insolvency proceedings are instituted by or against Seller, Purchaser shall have the right to immediately terminate this Purchase Order.
- (6) **Force Majeure.** Seller shall promptly provide written notice to Purchaser of any of the following events or occurrences, or any facts or circumstances reasonably likely to give rise to any of the following events or occurrences: (a) any failure by Seller to perform any of its obligations under this Agreement, (b) any delay in delivery of Products, (c) any defects or quality problems relating to Products, (d) any change in control of Seller, (e) any failure by Seller, or its subcontractors or common carriers, to comply with Law or (f) an Event of Force Majeure. An "Event of Force Majeure" means any: (i) act of God, fire, explosion, flood, hurricane; (ii) strike, lockout or other industrial disturbance or riot; (iii) act of terrorism, war, declared or undeclared; or (iv) any other cause or causes of any kind or character reasonably outside the control of such party whether similar or dissimilar from the enumerated causes. A party affected by an Event of Force Majeure will notify the other party immediately of its occurrence or its imminent occurrence and of its presumed duration. Seller shall, at Seller's sole cost and expense, take such actions as are necessary or appropriate to ensure the uninterrupted supply of Products to Purchaser during any such Event of Force Majeure or otherwise minimize any negative effects of such Event of Force Majeure.
- (7) **Invoice and Payment.** All invoices for Products shipped on this Purchase Order shall be rendered by and be payable to Seller. Invoice payment dates will be computed from the date of shipment. Unless otherwise specified, all amounts shall be invoiced and paid in the currency of the country in which the Purchaser is located and paid within 60 days of invoice date unless otherwise stated in contract agreement.
- (8) **Cancellation.** Purchaser may terminate this Purchase Order in whole or in part, for its sole convenience. Upon termination, Seller shall immediately stop performance. Seller's sole remedy shall be the sum of the following: percentage of the work performed as of the date of termination multiplied by the order price. Seller shall not be entitled to receive damages or compensation for any work done after it received Purchaser's notice of termination or for any work done in connection with any Product that can be resold to another buyer.

- (9) **Publicity.** Seller shall not refer to this Purchase Order or reference the Purchaser, its subsidiaries and affiliates, directly or indirectly, in its advertising or promotional cylinders without the prior express written consent of Purchaser on each occasion.
- (10) **Purchaser's Delivery Locations.** To the extent that this Purchase Order calls for work to be performed upon property owned or controlled by Purchaser, it is agreed that:
- (a) Seller will keep premises and work free and clear of all liens, and furnish Purchaser proper affidavits, releases and/or waivers certifying thereto.
- (b) The work will remain at Seller's risk prior to written acceptance by Purchaser and Seller will replace at its own expense all work damaged or destroyed by fire, force or violence of the elements or any other cause whatsoever.
- (c) Seller shall be solely responsible for the result of the work described in this Purchase Order and as such shall maintain daily control over its workers and the means and methods used to accomplish the result. Seller shall be solely responsible for the employment of workers and shall indemnify, defend and hold Purchaser harmless from any claim, demand, loss, cost, expense or suit, the substance of which is either: (i) the violation or claimed violation of any local, provincial, state or federal law, rule or regulation relating to the safety and employment of workers; or (ii) the failure to comply with any local, provincial, state or federal law, rule or regulation requiring employers to withhold taxes or similar charges from employees' pay; or (iii) the failure to pay unemployment or workmen's compensation benefits.
- If Products are delivered to a customer of Purchaser (as specified in the Purchase Order) then Seller will deliver such Products to such location and will indemnify, defend, and hold Purchaser harmless from any and all costs, expenses and damages incurred by Purchaser related to any such delivery or any injury to any person or property at the delivery location.
- (11) **Indemnity.** SELLER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS PURCHASER AND ITS OWNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES AND AGENTS, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, FROM AND AGAINST ANY AND ALL CLAIMS (INCLUDING, BUT NOT LIMITED TO, ALL COSTS, EXPENSES, LOSSES, DAMAGES, LIABILITIES AND REASONABLE ATTORNEYS' FEES) ARISING OUT OF OR RELATING TO A BREACH OF THIS AGREEMENT OR FOR ANY PERSONAL INJURY OR DEATH TO ANY THIRD PARTY.
- (12) **Insurance.** Seller shall carry public liability insurance including contractual coverage with respect to the indemnity provisions of the terms and conditions of this Purchase Order and automobile liability insurance. The policies shall have limits that are at least the equivalent of a combined bodily injury and property damage single limit of \$3,000,000 per occurrence. In addition, Seller shall carry statutory workers compensation coverage on its employees including employer's liability insurance with limits of at least \$1,000,000 or such higher amount as required by law. Seller shall have Purchaser named as an Additional Insured on a direct and primary, non-contributory basis on the policies required herein. All the above policies shall include a waiver of subrogation as respects Purchaser. Seller shall furnish Purchaser with certificates of insurance including a provision that Purchaser will receive 30 days written notice prior to expiration, cancellation or material change of the coverage. All deductibles on the above policies shall be no more than \$50,000 and shall be borne by Seller.
- (13) **Compliance with Legal Requirements.** Seller warrants that in its performance hereunder, it will comply with all applicable local, provincial, state, federal and foreign laws, rules and regulations, administrative and executive orders, and pertinent government procurement regulations. In addition, Seller shall, at its expense, obtain and maintain all permits and licenses as necessary, and Seller shall give notices and comply with all orders of any public authority bearing on Seller's performance under this Purchase Order. Seller and Seller's subcontractors shall comply with the Occupational Safety and Health Administration's hazard communication standard (CFR 1910.1200) and "Right to Know Laws" and any Purchaser contractor safety program then in effect. Seller must comply with all hazardous material labeling requirements. Seller shall provide and update Material Safety Data Sheets ("MSDS") for hazardous substances/cylinders used, furnished, delivered or brought on site by Seller or Seller's subcontractors. Seller shall comply with all local, provincial, state and federal laws and regulations concerning protection of human health, welfare or the environment and shall prevent the unlawful release of hazardous substances/cylinders into the environment. Seller shall investigate and remediate at Seller's costs any release or threat of release of any hazardous substances/cylinders into the environment, whether on or off site, and arising out of or related to any use, furnishing or delivery of hazardous substances/cylinders by the cylinders or products by Seller.
- (14) **Setoffs, Counterclaims and Withholding.** All claims for monies due or to become due from Purchaser shall be subject to deduction by Purchaser for any setoff or counterclaim arising out of this or any other of Purchaser's contracts with, or other obligations of, Seller. Purchaser may withhold payment of any amounts due Seller hereunder, or in connection with any other obligation of Purchaser to Seller, pending resolution of any claim asserted against Seller in regard to this Purchase Order or any other obligation of Seller to Purchaser and such amounts will only be paid, without interest, when, without cost to Purchaser, the cause of the withholding has been eliminated.
- (20) **Assignment, Delegation, Transfer.** Seller shall not assign or transfer any duties or claims hereunder, whether voluntarily or by operation of law, without Purchaser's prior written consent. Any such attempted assignment without Purchaser's prior written consent shall be null and void and Purchaser shall have the right to cancel Purchaser's obligations hereunder.