

Trace Zero (TZ) Standard Terms and Conditions of Purchase

- 1. GOODS.** Seller agrees to provide the goods (the "Goods") in accordance with the applicable purchase order, scope of work and with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order or shipment of Goods, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods. This Agreement may not be added to, modified, superseded or otherwise altered, except by writing signed by an authorized TZ representative. 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; or returning Seller's own form of acknowledgment. Any additional or different term or condition on Seller's acknowledgment 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 writing signed by an authorized representative of TZ. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms hereof and shipment of the Goods shall constitute such assent. TZ hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods. TZ shall not be subject to any charges or other fees as a result of such cancellation, or any restocking fees or charges for excess inventories or materials built or purchased by Seller unless approved in writing by an authorized TZ representative.
- 2. DELIVERY.** Delivery of Goods shall be made pursuant to the applicable purchase order. In the event Seller fails to deliver the Goods within the time specified, TZ may, at its option, decline to accept the Goods and terminate the Agreement. Seller shall package all items in suitable containers to permit safe transportation and handling. TZ's purchase order number must appear on all shipping containers, packing sheets, delivery tickets and bills of lading.
- 3. RISK OF LOSS.** Title to the Goods shipped under this Purchase Order shall pass to TZ in accordance with the shipping terms specified on the face of the Purchase Order. In the event shipping instructions are not provided, the applicable shipping terms shall be FCA, Origin, Freight Collect, using TZ specified carriers.
- 4. PAYMENT.** TZ shall pay Seller the amount agreed upon and specified in the applicable purchase order. Payment shall not constitute acceptance. Seller shall invoice TZ for all Goods delivered within ninety (90) days of delivery of Goods and must reference the applicable purchase order, and TZ reserves the right to return all incorrect invoices.

Unless otherwise specified on the face of a purchase order, TZ shall pay the invoiced amount within sixty (60) days after receipt of a correct invoice.

5. **WARRANTIES.** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of twelve (12) months from the date of delivery to TZ or for the period provided in Seller's standard warranty covering the Goods, whichever is longer. All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to TZ Seller's standard warranty and service guaranty applicable to the Goods. If TZ identifies a warranty problem with the Goods during the warranty period, TZ will promptly notify Seller of such problems and will return the Goods to Seller, at Seller's expense. Seller shall, at TZ's option, either repair or replace such Goods, or credit TZ's account for the same. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.
6. **INSPECTION.** TZ shall have a reasonable time after receipt of Goods and before payment to inspect them for conformity hereto, and Goods received prior to inspection shall not be deemed accepted until TZ has run an adequate test to determine whether the Goods conform to the specifications hereof. Use of a portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If Goods tendered do not wholly conform to the provisions hereof, TZ shall have the right to reject such Goods. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon TZ's delivery to the common carrier.
7. **INDEPENDENT CONTRACTOR.** Seller is an independent contractor for all purposes, without express or implied authority to bind TZ by contract or otherwise. Neither Seller nor its employees, agents or subcontractors ("Seller's Assistants") are agents or employees of TZ, not entitled to any employee benefits of TZ, including but not limited to, any type of insurance.
8. **SELLER RESPONSIBLE FOR TAXES AND RECORDS.** Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, and paying all such taxes or fees, including estimated taxes and employment taxes, due with respect to Seller's receipt of payment under this Agreement.
9. **INSURANCE.** Seller shall be solely responsible for maintaining and requiring Seller's Assistants to maintain such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's and Seller's Assistants' trades or businesses. Upon request, Seller shall provide TZ with certificates of insurance or evidence of coverage before commencing performance under this Agreement.
10. **INDEMNITY.** Seller shall indemnify, hold harmless, and at TZ's request, defend TZ, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the Goods provided under this Agreement, including,

without limitation, any claim by a third party against TZ alleging that the Goods, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party, whether such are provided alone or in combination with other products, software or processes.

11. **CONFIDENTIALITY.** Seller will acquire knowledge of TZ confidential information in connection with its performance hereunder and agrees to keep such information in confidence during and following termination or expiration of this Agreement. Seller agrees to limit its internal distribution of TZ confidential information to Seller's Assistants who have a need to know, and further agrees not to use such information except in the course of performing hereunder and will not use such information for its own benefit or for the benefit of any third party.
12. **TERMINATION.** TZ may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, TZ shall pay Seller for those conforming Goods delivered to TZ through the date of termination, less appropriate offsets. TZ may terminate this Agreement for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, TZ shall be liable to Seller only for those conforming Goods delivered to TZ through the date of termination, including unburdened cost of labor and materials in process completed prior to the cancellation notice, less appropriate offsets.
13. **FORCE MAJEURE.** TZ shall not be liable for any failure to perform including failure take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action and accident. In the event TZ is so excused, either party may terminate the Agreement and TZ shall at its expense and risk, return any Goods received to the place of shipment.
14. **SEVERABILITY.** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
15. **LIMITATION OF LIABILITY.** In no event shall TZ be liable to seller, seller's assistants, or any third party for any incidental, indirect, special or consequential damages arising out of, or in connection with this agreement, whether or not TZ was advised of the possibility of such damage.
16. **ASSIGNMENT; WAIVER.** Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of TZ. Any assignment or transfer without such written consent shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of TZ without restriction. A waiver of any defaults hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

17. **GOVERNING LAW.** This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of Michigan, excluding its conflict of law rules. The state and federal courts in Howell, Michigan shall have jurisdiction and venue over all controversies arising out of, or relating to, this Agreement.
18. **ENTIRE AGREEMENT.** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledged agreement or other document submitted by Seller.