

Zero Zone, Inc.

Master Purchase Order Terms and Conditions

THESE MASTER PURCHASE ORDER TERMS AND CONDITIONS ("Agreement") apply to all Purchase Orders placed by Zero Zone, Inc. (or any of its subsidiaries or affiliates, if such subsidiaries or affiliates are designated as the buyer in the Purchase Order) (hereinafter collectively referred to as the "Company") with the seller .. (Seller). Company's agreement to purchase any Deliverables is expressly conditioned on Seller's unqualified acceptance of this Agreement. Unless otherwise agreed to in writing by Company, any term or condition contained in any sales order, sales confirmation or other communication of Seller that purports to add to or is in any way inconsistent with this Agreement shall be of no force and is hereby expressly rejected. IF FOR ANY REASON THIS AGREEMENT OR ANY PURCHASE ORDER IS DEEMED AN ACCEPTANCE OF A PRIOR OFFER MADE BY SELLER, SUCH ACCEPTANCE IS EXPRESSLY CONDITIONED UPON SELLER'S ASSENT TO ONLY THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT.

1. **DELIVERABLES.** Seller agrees to sell Goods and perform Services in accordance with the terms and conditions of this Agreement and the Purchase Order(s) applicable to such Goods and/or Services. As used in this Agreement, (a) "Goods" collectively mean all items being sold by Seller to Company, whether finished goods, equipment, parts, materials, goods to be manufactured and/or installed or any combination thereof; and (b) "Services" collectively mean all services and labor performed by Seller or any of its employees, agents or subcontractors of any tier (collectively, "Agents"), whether on a stand-alone basis, in connection with the design, manufacture, sale, delivery and/or installation of Goods or as may otherwise be necessary to perform any Purchase Order. Goods and Services may be collectively referred to in this Agreement as "Deliverables."

2. **PURCHASE ORDERS.** At such time as Company wishes to purchase Deliverables from Seller, Company shall transmit a Purchase Order ("Purchase Order") to Seller by e-mail, facsimile transmission or such other means as the parties agree which sets forth the description and quantity of Deliverables, the requested delivery date, the designated delivery location and, if applicable, the method of delivery. Within five (5) days following the receipt of a Purchase Order, Seller shall accept or reject, in writing, the Purchase Order issued by Company. If Seller does not reject a Purchase Order in writing within such five (5) day period, Seller shall be deemed to have accepted the Purchase Order and shall perform it in accordance with its terms and conditions and this Agreement. Company may terminate or make changes at any time to a Purchase Order, which changes shall be implemented by Seller. If such changes cause an increase or decrease in the price, or the time required for performance, an equitable adjustment shall be made to the price for the Deliverables and the applicable Purchase Order shall be deemed modified accordingly. If Company terminates a Purchase Order after acceptance by Seller, Company shall pay Seller for that portion of the Deliverables completed and delivered through the date of termination.

3. **PRICE.** If the price for the ordered Deliverables is not stated in the Purchase Order, the Deliverables shall be billed at the lower of: (a) the price last quoted by Seller, or (b) a price at least as favorable as the price for which the Deliverables, or any reasonably comparable substitute for the Deliverables, are sold by Seller to a similarly-situated customer. Unless otherwise agreed to in a writing by Company, the price for Deliverables shall include all charges for packaging, packing, storage, insurance and any foreign, federal, state or local taxes that may be payable or levied upon the Deliverables or the parties hereto by reason of the sale, delivery or use thereof.

4. **INVOICING AND PAYMENT.** Individual invoices showing the Purchase Order number and any other information reasonably required by Company must be issued by Seller within three (3) days of the delivery of the Deliverables by Seller. If applicable, invoices shall have attached bills of lading or express receipts for the Goods that are the subject of the invoice. Company reserves the right to return all incorrect invoices. Unless otherwise specified on the face of a Purchase Order, Company shall pay the invoiced amount within thirty (30) days after receipt of a proper and complete invoice. It is understood that any cash discount period will date from the receipt of the Deliverables or from receipt of the invoice, whichever is later. Cash on Delivery (C.O.D.) shipments will not be accepted unless agreed to in advance.

5. **DELIVERY.** The specific quantity ordered must be delivered in full and may not be changed or delivered in installments without Company's prior written consent. Any unauthorized quantity is subject to rejection and return at Seller's expense. Delivery of Goods shall be made pursuant to the most current INCOTERMS (as defined by International Chamber of Commerce) specified on the face of the applicable Purchase Order. Time is of the essence with respect to the delivery of all Deliverables. Seller shall immediately notify Company if it appears that Seller may not meet any agreed-upon delivery date. Such notification shall include the reasons for delay, the steps being taken by Seller to remedy the delay, and the anticipated delivery date. Company shall have the right to reject and return (shipping charges collect) any Goods received in advance of the specified delivery date or Goods that do not conform with the Purchase Order. If no delivery date is specified in the Purchase Order, Seller shall fulfill it as expeditiously as possible. If no method of shipment or carrier is specified in the Purchase Order, Seller shall use the least expensive nationally reputable common carrier. If the Deliverables are to be shipped, Seller shall pack or otherwise prepare them to meet carrier requirements and safeguard them from damage. Seller shall package all Goods in suitable containers to permit safe transportation and handling. Each delivered container must be labeled and marked to identify contents without opening and all boxes and packages must contain packing slips listing contents. Company's Purchase Order number must appear on all shipping containers, packing slips, delivery tickets and bills of lading.

6. **INSPECTION.** All Deliverables are subject to Company's inspection prior to acceptance. Company shall have a reasonable period of time after delivery to inspect the Deliverables. Use of a portion of the Deliverables for such purposes shall not constitute acceptance. Company determines that the Deliverables, or any part thereof, do not conform with the applicable Purchase Order or this Agreement, Company may reject such non-conforming Deliverables and cancel any unshipped or unperformed portion of the applicable Purchase Order. Deliverables rejected as non-conforming or those which are supplied in excess of quantities called for in the Purchase Order may be returned to Seller, freight collect. Risk of loss or damage to rejected Deliverables shall pass to Seller upon Company's tender of the rejected Deliverables to the carrier. Payment for the Deliverables prior to inspection shall not constitute acceptance thereof. In the event Deliverables must be installed, tested or assembled prior to commercial use, they shall not be deemed finally accepted until such installation, testing or assembly indicates the Deliverables are in accordance with their Specifications and are operating properly. Upon reasonable advance written notice, Company may inspect any site where the Deliverables are designed, manufactured or performed.

7. **WARRANTIES.**

(a) **Goods.** Seller warrants that all Goods sold under this Agreement will: (i) comply with the specifications, drawings, plans, samples or other descriptions made or furnished by Seller for the Goods (collectively, the "Specifications"); (ii) be fit and sufficient for the purposes for which they were manufactured and sold, (iii) be new and merchantable; (iv) be of good material and workmanship and free from defects for a period of fifteen (15) months from the date of delivery to Company or for the period provided in Seller's standard warranty covering the Goods, whichever is longer; and (v) be free from all liens and encumbrances. The foregoing warranties survive Company's inspection, acceptance and use of the Goods. Seller also warrants that it shall assign or otherwise

provide to Company the benefits of any assignable warranties provided by manufacturers or sellers of material or components incorporated into the Goods, and shall perform its responsibilities so that such warranties remain in full force and effect. Company may require prompt repair or replacement of defective or nonconforming Goods. Replaced and/or repaired Goods shall be warranted for the remainder of the original warranty period or twelve (12) months from the date of replacement or repair, whichever is longer. In each instance, Seller's warranty coverage shall include, without limitation, all costs of component parts replacement, transportation and labor.

(b) Services. Seller warrants to Company that all Services shall: (i) comply with the Specifications and the applicable Purchase Order; (ii) be performed using sound practices and in a competent and professional manner by knowledgeable, trained, and qualified personnel; and (iii) be in accordance with generally accepted industry standards. Company may require prompt re-performance of any defective or nonconforming Services.

8. INSURANCE.

(a) Commercial General Liability (CGL) insurance with limits of liability of not less than \$1,000,000 per Occurrence and \$2,000,000 annual aggregate. CGL insurance shall be written on an ISO occurrence form CG 00 01 1001 (or a substitute for providing equivalent coverage) and shall cover bodily injury and property damage arising from premises operations, independent contractors, products-completed operations, personal and advertising injury and liability assumed under an insured contract (tort liability of another assumed in a contract). CGL insurance shall also contain a per Project Aggregate. All CONTRACTOR'S insurance will name Zero Zone, Inc., its subsidiaries and affiliated entities as an Additional Insured under the CGL insurance using ISO additional insured endorsement CG 2010 1001 and CG 2037 1001 or a substitute providing equivalent coverage. This insurance shall apply as primary and noncontributory insurance with respect to any other insurance afforded to Zero Zone, Inc.

(b) Worker's Compensation insurance affording statutory coverage and containing not less than statutory limits for the state(s) in which CONTRACTOR is conducting business related to this Agreement, and Employer's Liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease. CONTRACTOR shall require all sub-contractors to maintain similar coverage (unless Contractor's policy or policies insure subcontractor employees on a primary basis) for the subcontractor's employees employed in connection with this project. CONTRACTOR waives all rights against Zero Zone, Inc. and its agents, officers, directors and employees from recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability coverage. CONTRACTOR shall obtain a waiver of subrogation endorsement equivalent to WC 00 03 13 to the benefit of Zero Zone, Inc. to affect this waiver.

(c) Automobile Liability insurance shall include coverage for owned, hired and non-owned autos in an amount not less than \$1,000,000 each Occurrence for a Combined Single Limit covering bodily injury and property damage.

(d) Commercial Umbrella insurance with limits of liability of not less than \$5,000,000 per Occurrence and Annual Aggregate. Umbrella insurance shall provide coverage over the CGL, Employer's Liability and Automobile liability as required in Section 1-3 above, including Additional Insured coverage as required.

9. COMPLIANCE WITH LAWS. Seller represents and warrants that all Deliverables have been or will be designed, manufactured, produced, performed, packaged, marked, labeled, shipped and invoiced in compliance with all applicable foreign, federal, state and local laws, statutes, acts, rules, regulations, ordinances, executive and administrative orders, rules and industry standards.

10. INDEMNITY. Seller shall indemnify, hold harmless, and at Company's request, defend Company, its affiliates and subsidiaries, and each of their respective directors, officers, employees, successors and assigns (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") from and against any third-party claim, demand, suit, action, proceeding, liability, loss, cost or expense, including, without limitation, the Indemnified Parties' actual attorneys' fees and other costs of litigation, to the extent arising from: (a) the Deliverables provided under this Agreement; or (b) breach by Seller or its Agents of the terms, conditions, covenants and warranties applicable to them in this Agreement. The Indemnified Parties shall give Seller notice of any claim, suit, action or proceeding to which Seller has an indemnification obligation under this Agreement. Except with the prior written consent of the Indemnified Parties, Seller, in the defense of any claim, suit, action or proceeding, shall not consent to entry of any judgment or order, interim or otherwise, or enter into any settlement (i) that provides for injunctive or other non-monetary relief affecting the Indemnified Parties, or (ii) that does not include, as an unconditional term thereof, the giving by each claimant or plaintiff to the Indemnified Parties a release from all liability with respect to such claim, suit, action or proceeding.

11. RECALL. If any of the Goods contain a safety hazard, an unsafe condition, a serious quality or performance deficiency making it necessary or advisable that the affected Goods be recalled, Seller shall be responsible for promptly undertaking all appropriate corrective actions. Seller shall bear all costs and expenses related to complying with such recall procedures. Seller shall consult with Company before making any statements to the public or a governmental agency concerning safety hazards affecting the Goods, except where consultation would interfere with the timely notification required to be given under any applicable law or regulation.

12. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE TO SELLER OR ITS PARENT COMPANY, SUBSIDIARIES, AFFILIATES OR AGENTS UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS, DOWN TIME, LABOR COSTS OR OTHER ECONOMIC LOSSES) ARISING FROM OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT BY COMPANY, OR FOR ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER TO OR FOR THE BENEFIT OF COMPANY.

13. CONFIDENTIAL INFORMATION. During the course of performing this Agreement, Seller may receive or be given access to Company's Confidential Information. As used in this Agreement, "Confidential Information" means information (whether oral, written, recorded magnetically or electronically or otherwise stored), which is possessed by or developed for Company and which relates to Company's existing or potential business, which information is not reasonably ascertainable by Company's competitors or by the general public through lawful means, and which information Company treats as confidential, including but not limited to, Company's trade secrets; research; patent applications; formulas; data; specifications; operations; strategies; technology; discoveries, inventions, improvements, innovations; processes; marketing and business plans; customers and customer information; contracts, procurement and sales information; pricing, credit and financial information. Notwithstanding the foregoing, Confidential Information does not include information which Seller can demonstrate: (a) was publicly available as of the date of disclosure; (b) becomes publicly available through no fault of Seller or any of its Agents; (c) is lawfully obtained by Seller from a third-party that is not subject to any obligation of confidentiality or restriction of use; or (d) was independently developed by

Seller and was in Seller's possession prior to receipt thereof from Company. Seller may use Company's Confidential Information only to the extent necessary for it to perform its duties and obligations under this Agreement. Seller will not disclose Company's Confidential Information to any person or entity for any reason without the advance written consent of Company, which it may withhold in its sole discretion. Seller shall be liable for any breach of this Section by its Agents. Seller shall return or destroy all Confidential Information in its possession upon the termination of this Agreement or at Company's request at any time. In the event that Seller is compelled by any law, governmental regulation, court order, subpoena, discovery request or similar legal process or authority to disclose any Confidential Information, (i) Seller shall immediately provide Company with written notice of the same; (ii) unless the legal process or authority indicates otherwise, Seller shall make no disclosure without first receiving Company's reasonable directives; (iii) Seller shall use its best efforts to make the required disclosure in such a way as to maintain the confidentiality of such information; and (iv) unless the legal process or authority indicates otherwise, such information shall continue to be Confidential Information and its disclosure shall not relieve Seller from its obligations under this Section.

14. **INTELLECTUAL PROPERTY.** Seller represents and warrants that the Deliverables do not infringe or misappropriate any patent, patent application, copyright, trademark, trade dress, trade secret or other intellectual property right of any third-party and Seller shall indemnify, defend and hold Company harmless from and against any such claims of infringement or misappropriation.

15. **HAZARDOUS MATERIALS.** With respect to Goods that contain any hazardous, toxic or flammable materials, Seller shall adequately warn Company, furnish Company with all applicable Material Safety Data Sheets and implement precautionary measures to protect Company and its Agents and customers from health risks associated with such Goods.

16. **INDEPENDENT CONTRACTORS.** Company is interested only in the results obtained under this Agreement, the manner and means of achieving the results are subject to Seller's sole control. Seller is an independent contractor for all purposes, without express or implied authority to bind Company by contract or otherwise. Neither Seller nor any of its Agents shall be eligible for, entitled to, or participate in, any of Company's compensation, pension, health or other fringe benefit plans.

17. **ATTORNEY'S FEES.** In any action to interpret or enforce this Agreement, the prevailing party shall be entitled to recover its actual attorneys' fees and other costs of litigation from the other party.

18. **SET OFF.** Company shall be entitled to set off any amount payable by Company under this Agreement against any amounts owing from Company to Seller.

19. **ASSIGNMENT.** Seller may not assign this Agreement or subcontract or delegate of any of its rights or obligations under this Agreement without the prior written consent of Company, not to be unreasonably withheld or delayed.

20. **REMEDIES CUMULATIVE.** The remedies provided for in this Agreement shall be cumulative and in addition to any other remedies in law or in equity.

21. **SURVIVAL OF OBLIGATIONS.** Any term, condition, warranty, covenant, obligation to indemnify which by its nature extends beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

22. **GOVERNING LAW; VENUE.** This Agreement all and Purchase Orders shall be construed and governed by Wisconsin law (excluding application of its conflicts of law rules and excluding the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods). All disputes, controversies, claims, actions, proceedings and counterclaims arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be commenced, tried, and litigated only in the state courts sitting in Waukesha County, Wisconsin or the U.S. Federal Court for the Eastern District of Wisconsin and those courts hearing direct appeals therefrom. Each Party hereby waives its right, if any, to bring any dispute, controversy, claim, action, proceeding or counterclaim arising out of or relating to this Agreement before any other court or tribunal. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW THE RIGHT TO A TRIAL BY JURY.

23. **ENTIRE AGREEMENT; WAIVER.** This Agreement and all Purchase Order issued by Company hereunder are the complete, final, and exclusive statement of the terms of the agreement between the parties and supersede any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a Purchase Order or a change order issued by Company, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related Purchase Orders. No failure on the part of a party to exercise, and no delay in exercising, any right hereunder will operate as a waiver thereof.

IN WITNESS WHEREOF, the Seller, agreeing to be bound by all of the terms and conditions of this Agreement, has caused its authorized representative to execute and deliver this Agreement as of the date written below.

SELLER: _____

ZERO ZONE, INC.

SIGNATURE: _____

SIGNATURE: _____

PRINTED NAME: _____

PRINTED NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____