

**ZERO POINT MANUFACTURING, INC.**

**TERMS AND CONDITIONS OF SALE**

**(Revision Date: December 23, 2023)**

1. **OFFER AND ACCEPTANCE.** This writing constitutes an offer or counter-offer by Zero Point Manufacturing, Inc. (“ZPM”) to sell the products and/or services described in or with this writing in accordance with these terms and conditions of sale; this writing is not an acceptance of any offer made by the buyer to which this offer is addressed (the “Buyer”), and this offer is expressly conditioned upon assent to these terms and conditions of sale. ZPM objects to any different or additional terms or conditions contained or referenced in any request for quotation, purchase order, or other form or communication previously or hereafter submitted by Buyer to ZPM. This offer is made only to Buyer, and ZPM shall have no obligation to honor or fulfill this offer or any related quotation to any other party. No such different or additional term or condition shall be binding or effective. Buyer shall be deemed to have accepted and assented to this offer and these terms and conditions of sale when: (a) Buyer issues a purchase order that is in response to ZPM’s quotation or that otherwise references ZPM’s quotation, and such quotation includes or references these terms and conditions of sale, (b) Buyer has accepted delivery of the whole or any part of the products or services described herein, or (c) Buyer has otherwise assented to the terms and conditions hereof, whichever occurs first. Upon Buyer’s acceptance of this offer, these terms and conditions of sale, together with the quotation, invoice, and/or other materials from ZPM that accompany or incorporate these terms and conditions, shall constitute the entire agreement between ZPM and Buyer on the subject hereof (the “Contract”), superseding all prior and contemporaneous oral and written communications and negotiations. These terms and conditions of sale shall also apply to change orders, if any. This offer expires thirty (30) days after its date unless otherwise specified by ZPM in writing, and it may be revised or withdrawn by ZPM any time prior to acceptance.
2. **CANCELLATION.** All orders may be canceled by Buyer within twenty-four (24) hours following an order confirmation submitted by ZPM (the “Cancellation Period”). Following the Cancellation Period: (i) no order or accepted offer may be canceled or altered by Buyer except upon terms and conditions acceptable to ZPM, as evidenced by ZPM’s prior written consent, (ii) ZPM may, in its sole discretion, require Buyer to receive and pay for all products and parts that have been run by ZPM, and (iii) charges for order cancellations may be negotiated on a case by case basis in ZPM’s sole discretion. In any event, however, Buyer, at ZPM’s sole discretion, may require prompt payment to ZPM upon demand for all labor and materials either in process or completed on canceled orders, plus a ten percent (10%) restocking fee on stock items already shipped, overhead, and a reasonable profit.
3. **PART NUMBERS.** ZPM provides no guarantee that any part numbers or revisions listed on any quotation correspond to the Buyer’s production number(s) or revision(s) of the corresponding product(s). Buyer bears all responsibility for ordering its intended products on any purchase order or other form and for verifying production part numbers prior to placing an order.
4. **PRICES AND PAYMENT.** Prices quoted are based on the quantities specified by ZPM, whether on ZPM’s quotation or otherwise. If quantities are changed by Buyer for any reason, or if Buyer at any time requires delivery of a specific quantity which necessitates an increase in ZPM’s cost of producing the products, ZPM reserves the right to adjust the price(s) accordingly. If the Buyer changes any material or manufacturing requirements for any reason which necessitates an increase in ZPM’s cost of producing products, ZPM reserves the right to adjust the price(s) accordingly. ZPM reserves the right to adjust pricing for any federal, state, local, or other applicable mandated costs, taxes, and tariffs that increase ZPM’s cost of producing products during the life of this Contract. Buyer shall pay the price(s) as adjusted by ZPM pursuant to this section. Invoices are due and payable within thirty (30) days from date of invoice, or upon the otherwise specified terms listed on the sales order or order acknowledgement under “Terms”. Interest may be charged at the rate determined at ZPM’s sole discretion (but in any case, not more than the highest rate permitted by applicable law) on all accounts not paid when due, and Buyer shall pay such interest on demand. ZPM reserves the right to change the payment terms provided herein when, in ZPM’s opinion, the financial condition or previous payment record of Buyer so warrants. Buyer shall pay or reimburse on demand all costs, including without limitation attorneys’ fees and collection costs, incurred by ZPM in connection with the collection of late payments or the enforcement of ZPM’s rights under the Contract.
5. **TAXES AND OTHER CHARGES.** Each and every manufacturer’s tax, occupation tax, use tax, sales tax, excise tax, duty, custom, tariff, inspection, or testing fee, and every other tax, fee, interest, or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction(s) between ZPM and Buyer, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event ZPM is required to pay any such tax, fee, interest, or charge, Buyer shall reimburse ZPM therefore upon demand.
6. **CREDIT.** Fulfillment of orders by ZPM shall at all times be subject to its approval of Buyer’s credit. ZPM, at its sole discretion, may at any time decline to make any shipment or perform any work or services except upon receipt of payment or security upon such terms and conditions as may be satisfactory to ZPM. In the event of any bankruptcy, receivership, or insolvency proceedings, whether voluntary or involuntary, against Buyer as debtor, or in the event of the appointment, with or without Buyer’s consent, of a receiver or trustee for Buyer or its assets or an assignee for the benefit of Buyer’s creditors, ZPM may elect to cancel any unfilled order(s) without liability.

7. **DELIVERY, CLAIMS, AND FORCE MAJEURE.** Delivery of products to a carrier at ZPM's plant of manufacture shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss of or damage to products in transit. ZPM reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; with all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept that installment or remaining deliveries. Unless otherwise specified, ZPM does not include shipping and handling charges in quotations. Unless otherwise agreed, all sales to Buyer shall be ex-works (Incoterms 2000). In the event that Buyer requires delivery of the Contract otherwise than ex-works, Buyer must contact ZPM in order to detail its requirements. ZPM will, in its discretion, use standard packaging for shipping where possible and assess shipping and handling charges to Buyer at the time of shipment. ZPM reserves the right to adjust shipping and handling charges to reflect increased cost if specific packaging or shipping methods are requested by Buyer or otherwise required in ZPM's judgment. Unless otherwise expressly agreed in writing signed by an authorized representative of ZPM, Buyer shall be responsible for payment of all shipping and handling charges under the Contract in accordance with the invoice payment provisions of Section 4 hereof.
- a. ZPM makes its best effort to fulfill Contracts at exact quantities. Due to the nature of the manufacturing process, deliveries of up to and including ten percent (10%) less than the quantity specified on ZPM's quotation, or up to and including ten percent (10%) greater than the quantity shown on ZPM's quotation, shall not be deemed a shortage or an overage, respectively, and Buyer shall pay for the products delivered at the Contract price. Buyer may request exact quantities on a case-by-case basis or as an account default, as such, prices may be adjusted accordingly. Claims for shortages, overages, or other errors in delivery must be made in writing to ZPM within a reasonable timeframe after receipt of shipment. Claims for visible defects should be made as soon as possible after receipt of shipment. Failure to make such claims may constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss of or damage to products in transit must be made to the carrier and, when necessary, to ZPM.
- b. All shipping and delivery dates are (i) presented as standard lead times, (ii) subject to review and confirmation following ZPM's receipt of a purchase order or other acceptance, (iii) subject to revision and extension as a result of any change order, and (iv) are approximate. ZPM may, in its sole discretion, consider requests for expedited lead times and adjust charges therefor on a case-by-case basis. ZPM shall not be liable for any damage or losses as a result of any delay in shipping or delivery or failure to ship or deliver due to any cause beyond ZPM's reasonable control, whether foreseeable or not, including, without limitation, any act of nature/God, act of Buyer, epidemic, pandemic, public health emergency, embargo, governmental restrictions on transportation, travel or gatherings or shut-down orders, other governmental act, regulation, priority, requirement, order, or request, fire, flood, explosion, accident, strike, slowdown, other labor difficulty, sabotage, war, terrorist act or threat, riot, delay in transportation, breakage of equipment, or inability to obtain necessary labor, materials, components, or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for ZPM's inability to deliver for any reason shall be rescission of this Contract. In cases of shortages of labor, materials, components, or facilities, ZPM may allocate the scarce resource among Buyer orders and other customers' orders on any reasonable basis as determined by ZPM in its sole discretion.
8. **STORAGE.** At ZPM's sole discretion, with Buyer's agreement hereof, ZPM may charge Buyer for storage of, including but not limited to, parts, products, materials, fixtures, jigs, tooling, equipment, and devices for a period previously agreed to between ZPM and Buyer. Such storage shall be at the Buyer's risk. Buyer shall pay all handling, transportation, and storage costs at the prevailing commercial rates upon submission of invoices therefor. Given a reasonable period and upon written notification from ZPM to Buyer, such materials may be used, consumed, sold, recycled, returned, or otherwise disposed of at ZPM's sole discretion.
9. **CHANGES.** ZPM may at any time make such changes in the manufacturing and construction process of products as shall constitute an improvement in the judgment of ZPM. With Buyer consent or exact equivalent substitutes, ZPM may furnish suitable substitutes for materials or components that are unobtainable because of priorities or regulations established by governmental authority or unavailable from suppliers. ZPM reserves the right to discontinue the manufacturing of any part, piece, model, or product at any time. If such product to be discontinued is exclusive to Buyer, such modification or discontinuation shall not apply to orders placed prior to such discontinuation or modification.
10. **WARRANTIES: DISCLAIMER.** ZPM warrants to the Buyer the products manufactured by it and supplied hereunder as set forth in the Warranty Agreement maintained on ZPM's website, as updated from time to time, (the "Warranty"). This Warranty shall be ZPM's sole obligation and Buyer's exclusive remedy hereunder. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND ZPM EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.** Notwithstanding anything to the contrary herein, the Warranty does not cover, and ZPM shall not be responsible for, any defect, damage, or failure caused by abuse, misuse, neglect, accident, or improper installation, operation, use (including, without limitation, use in an environment for which a product is not intended), or maintenance.

Any description of the products, whether in writing or made orally by ZPM or ZPM's employees or agents, and any specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with Buyer's order, are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by ZPM or ZPM's employees or agents regarding use, application, or suitability of the products, or offering any other additional or alternative warranty, shall not be construed as an express warranty unless confirmed to be such in an express writing signed by an authorized representative of ZPM. Buyer shall be solely responsible for (i) verifying that any product it orders is compatible with and rated for the application in which Buyer intends to use such product, and (ii) complying with all laws, rules, orders, and regulations applicable to Buyer, including, without limitation, all such laws, rules, orders, and regulations governing (x) the use of specified products in any particular application and (y) the transportation, use, and storage of hazardous materials.

11. **RETURNS.** No products shipped to Buyer may be returned without ZPM's advance written permission (evidenced by a Returned Materials Authorization ("RMA") number issued by ZPM), which may be granted or withheld in ZPM's sole discretion. Returned products shall be shipped at Buyer's sole risk and expense and must be securely packaged to reach ZPM without damage; and any cost ZPM incurs to put products in marketable condition shall be charged to Buyer. The RMA number must be referenced in Buyer's shipping documents.
12. **INFRINGEMENT.**
  - a. ZPM will, at its own expense, defend or settle any claim that may be instituted by any unaffiliated third party against Buyer if and to the extent such claim is based on an allegation that the process(es) used by ZPM to manufacture the products sold by ZPM to Buyer hereunder infringe any valid United States patent, trademark, or copyright, if and to the extent such alleged infringement consists of the use of such manufacturing process by ZPM, and not to the purchase or use of such products themselves, or parts thereof, by the Buyer or its customers, and provided Buyer shall have made all payments then due hereunder, and shall give ZPM immediate notice in writing of any such claim and transmit to ZPM immediately upon receipt all processes and papers served upon Buyer and permit ZPM through its counsel, either in the name of Buyer or in the name of ZPM, to defend or settle the same, and shall give all needed information, assistance, and authority to enable ZPM to do so. If the process used by ZPM to manufacture the products is held by a final court decision from which no further appeal can be taken, to infringe any valid United States patent, trademark, or copyright and the use of such products is on that basis permanently enjoined, or in the event of a settlement or compromise approved by ZPM that precludes further use of such products by Buyer, then: (i) ZPM will pay any final and unappealable award of damages in such suit to the extent directly attributable to such process infringement, and (ii) ZPM shall, at its own expense and at its sole option, either (1) procure for Buyer the right to continue using the products to the extent contemplated herein, (2) replace the products with goods manufactured with noninfringing processes, or (3) refund the undepreciated portion of the purchase price and the transportation costs Buyer paid for the products upon return (at ZPM's option) of such products to ZPM.
  - b. Notwithstanding the foregoing: (i) ZPM shall not be responsible for any compromise or settlement made without its written consent; and (ii) ZPM shall not be responsible for infringements by the products themselves, or for infringements of combination or process patents covering the use of ZPM-furnished products in combination with other goods or materials not furnished by ZPM, or for any claim of contributory infringement resulting from the use or resale by Buyer of products sold hereunder, or for infringements by any of the products ZPM furnishes to Buyer that are manufactured in accordance with drawings, designs, design criteria, or specifications owned, proposed, or furnished by Buyer, and Buyer shall indemnify and defend ZPM from and against all such infringements and claims described in this Section 12.b(ii). The foregoing Section 12.a, as limited by this Section 12.b, states the entire liability of ZPM and the exclusive remedy of Buyer for infringement, and in no event shall ZPM be liable for any consequential damages attributable to an infringement.
13. **LIMITATION OF LIABILITY; NO CONSEQUENTIAL DAMAGES.** ZPM's liability with respect to the products and/or services sold hereunder shall be limited to the warranty provided in Section 10 hereof; ZPM's liability with respect to infringement shall be limited to the remedy set forth in Section 12.a hereof as limited by Section 12.b hereof; and, with respect to other performance or breach of this Contract, ZPM's liability shall be limited to direct damages not to exceed the Contract price of the product(s) associated with the breach. **ZPM SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO THIS CONTRACT OR PRODUCTS SOLD OR SERVICES RENDERED BY ZPM, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, ZPM specifically disclaims any liability for property or personal injury damages, penalties, administrative fees, overhead, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated goods or equipment, cost of capital, cost of substitute products, facilities, or services, down-time, shut-down, or slow-down costs, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages, costs, or losses. **ZPM SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONTINGENT DAMAGES WHATSOEVER, EVEN IF ZPM HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.**

14. INDEMNITY. Buyer shall defend, indemnify, and hold harmless ZPM from and against any and all claims, losses, liabilities, damages, and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which ZPM may incur or suffer as a result of (i) any claim by Buyer or any third parties that arises out of or in connection with the products and/or services sold hereunder, or the goods into which those products and/or services have been incorporated, and that is based on defects not proven to have been caused solely by ZPM's negligence, or (ii) the negligence or intentional misconduct of Buyer or its employees, agents, or customers.
15. TECHNICAL INFORMATION; CONFIDENTIALITY. Any sketches, models, or samples submitted by ZPM shall remain the property of ZPM and shall be treated as ZPM's confidential information by Buyer unless ZPM has in writing stated a contrary intent. No use or disclosure of such sketches, models, or samples, or any design or production techniques revealed thereby, shall be made by Buyer or others without the express, prior written consent of ZPM. Buyer shall not disclose any of ZPM's confidential information to any third party or use any of it for any purpose other than performing Buyer's duties under the Contract, without the express, prior written consent of ZPM. Buyer shall comply with all applicable laws, rules, orders, and regulations relating to data privacy, data security, data protection, and confidentiality with respect to all personal information it obtains under or in connection with the Contract. In furtherance of and without limiting the foregoing, the terms of the Mutual Non-Disclosure Agreement (NDA) maintained on ZPM's website and updated from time to time are hereby reference as though each of ZPM and Buyer had executed and delivered the same in connection with the Contract.
16. BUYER'S PROPERTY. Any property of Buyer placed in ZPM's custody for performance of this Contract is not covered by ZPM's insurance, and no risk is assumed by ZPM in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder, or any accident or event beyond the reasonable control of ZPM.
17. TOOLS. Any dies, jigs, tools, negatives, assembly manuals, CAD models and drawings, proprietary methods, or plates (collectively, "Tools") which ZPM provides, manufactures, or acquires for performance of this Contract shall remain the property of ZPM, notwithstanding any charges to Buyer therefor. Tool charges convey to Buyer the right to have the Tools used by ZPM for performance of this Contract, but they do not convey title, or right of possession. ZPM shall be responsible for routine maintenance and repair of all Tools, as well as for major overhauls, replacements, or changes, but all charges for such work shall be charged to Buyer by separate invoice as such charges are incurred. Unless other specific written arrangements are agreed to by the parties, Tools may be destroyed in ZPM's sole discretion if they have gone twenty-four (24) months without being used.
18. [ARTWORK]. Due to special mechanical requirements in the manufacture of the products, all [artwork] submitted by Buyer is subject to approval by ZPM. If additional charges for retouching and/or rework are necessary, Buyer will be notified and billed therefor at cost.]
19. NO COPYING. ZPM's designs are and shall remain the sole property of ZPM. Buyer agrees not to (a) use, copy, disassemble, decompile, or reverse-engineer any of ZPM's designs, or (b) facilitate any third party's efforts to use, copy, disassemble, decompile, or reverse-engineer any of ZPM's designs.
20. WAIVER; SEVERABILITY. No waiver by ZPM of any breach of any of the terms or conditions of this Contract shall be valid unless in writing and signed by an authorized representative of ZPM, and no such signed written waiver shall be construed as a waiver of any other terms, conditions, or breach of the Contract. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions.
21. DISPUTE RESOLUTION. ZPM and Buyer hereby consent and agree that any and all disputes arising out of this Contract or its performance or breach or the products or services furnished by ZPM that cannot be resolved through good faith negotiation shall be resolved exclusively through binding arbitration in [Pittsburgh, Pennsylvania], U.S.A. under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration proceedings shall be conducted in the English language by a single neutral arbitrator who is fluent in English. This provision shall not impair the right of either party to seek injunctive relief from any court of competent jurisdiction, pending and/or in aid of arbitration, in the event that party is confronted with a genuine risk that it will suffer irreparable injury before relief can reasonably be anticipated in the arbitral forum; ZPM and Buyer each consents to the personal jurisdiction of the state and federal courts sitting in [Allegheny County, Pennsylvania], U.S.A. for purposes of any such actions for injunctive relief.
22. GOVERNING PROVISIONS. **THIS CONTRACT AND THESE TERMS AND CONDITIONS OF SALE SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN ZPM AND BUYER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE [COMMONWEALTH OF PENNSYLVANIA] (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS CONTRACT WHICH ARE NOT EXPRESSED HEREIN. THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** References herein to "days" mean calendar days unless otherwise stated.