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## XCELAERO PURCHASING TERMS AND CONDITIONS AND QUALITY CLAUSES

### A. ACCEPTANCE

This order constitutes a binding contract upon the terms and conditions herein when accepted by the seller, either by acknowledgement or by commencement of shipments. If any of seller's prior proposals, quotations or writings are in conflict with the terms of this order, the terms hereof shall govern. Purchaser recognizes that seller may, for operating convenience, utilize their own form of acknowledgement or confirmation of sale in accepting this order; in such case, any provisions, terms, or conditions in such form of acceptance which modify, conflict with, contradict or add to any provision, terms, or condition of this order, shall be deemed to be waived (unless expressly accepted in writing by purchaser) it being agreed that the provisions, terms, or conditions of this order constitute the entire contract between the parties. No alterations, modifications, or deletions of any of the terms or provisions of this order made by the seller will be binding upon the purchaser, unless expressly accepted in writing by purchaser.

### B. DELIVERY DATES

Time of delivery is of the essence, and in the event of seller's failure to deliver as and when specified, purchaser reserves the right to cancel this order, or any part thereof without charges therefore, without prejudice to its other rights, and seller agrees that purchaser may return part or all of any shipment so made and may charge seller with any loss or expense sustained as a result of such failure to deliver. Any shipment can be made in advance of schedule, at purchaser's option, will be (1) accepted but entry of invoice will be deferred until such time as the shipment was scheduled to be made, or (2) returned to seller at seller's expense.

### C. EXTRA HANDLING CHARGES

Any extra handling charges incurred due to the failure of seller to fill the order, as per instruction, will be billed back to the seller.

### D. TERMS

Unless otherwise stated, thirty days following delivery, except purchaser will be offered and may take seller's customary cash discount. Should invoice bear a date prior to date material is received by purchaser, the time during which discount for payment of invoices is allowed shall not begin to run until the date the material is received by purchaser. Sight draft shipments will not be honored.

### E. WARRANTIES

Unless otherwise agreed to in writing by the parties, seller expressly warrants that all articles ordered to specifications will conform thereto and to the blueprint's or drawings, samples or other description

furnished by purchaser (or, if not ordered to specifications, will be fit and sufficient for the purposes intended) and that all articles will be merchantable, of good material and workmanship, and free from defect. These warranties shall survive acceptance and payment and shall run to purchaser, its successors, assigns, customers and the user of the products ordered herein and shall not be deemed to be exclusive.

#### F. GENERAL INDEMNITY

Seller agrees to defend and save purchaser, its employees, agents, affiliates, successors, assigns, customers or users of the products ordered herein, against all damages, claims or demands and all suits at law or in equity arising out of the death or injury to any person or damage to any property or defect in any goods alleged to have resulted from the goods and articles hereby ordered, and upon notification of any such suit or claim to seller, seller shall defend the same at seller's expense as to all costs, fees, and damages.

#### G. PATENT INDEMNITY

Seller agrees to indemnify and hold purchaser, its successors, assigns, customers and the users of the products ordered herein, harmless against loss, damage or liability including costs and expenses, which may be incurred on account of any claim, demand, suit or judgment involving infringement or alleged infringement of any patent rights in the manufacture, use or disposition of any article or material supplied hereunder, provided purchaser shall notify seller of any such claim, demand or suit, and to the extent possible, the seller shall be permitted to defend the same or make settlement in respect thereof.

#### H. FORCE MAJEURE

Purchaser shall not be responsible for failure to receive delivery if occasioned by unforeseeable causes beyond the control and without the fault or negligence of purchaser. At the purchaser's option, the total quantities covered by this order may be reduced to the extent of shipments refused or by the delivery period specified may be extended by a time equal to that during which shipments shall be refused and such shipments thereafter made during the period of extension.

#### I. CONFIDENTIAL DATA

Seller agrees to treat as strictly secret and confidential all specifications, drawings, blueprints, nomenclature, samples and models and other information supplied by the purchaser and further agrees not to disclose any information relating to this order to any person not entitled to receive it.

#### J. INSURANCE

In the event that Seller's objections hereunder require or contemplate performance of services by Seller's employees, or persons under contract to seller, to be done on purchaser's property, or property of purchaser's customers, the seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the purchaser. Seller shall maintain all necessary insurance coverage's including public liability and workers' compensation insurance. Seller shall indemnify and save harmless and defend purchaser from any and all claims or liabilities arising out of the work covered by this paragraph.

#### K. PRICES

Seller agrees and represents that the prices specified in this order do not exceed current selling prices for the same or substantially similar articles, and for comparable quantities, and that such prices are not in the excess of the maximum prices permitted by any applicable governmental regulations existing at the date of this order. Seller will give the purchaser the benefit of any price decline to actual time of shipment except that should purchaser permit shipment to be made before specified shipping date, purchaser shall have advantage of lower prices which occur before specified shipping date.

#### L. INSPECTION/TESTING

Payment for the goods delivered hereunder shall not constitute acceptance thereof. Purchaser shall have the right to inspect such goods and to reject any or all of said goods which are in purchaser's judgment defective or nonconforming. Goods rejected and goods supplied in excess of quantities called for herein may be returned to seller at its expense and, in addition to purchaser's other rights, purchaser may charge seller all expenses of unpacking, examining, repacking and reshipping such goods. In the event purchaser receives goods whose defects or nonconformities are no apparent on examination, purchaser reserves the right to require replacement, as well as payment of damages. Nothing contained in this purchase order shall relieve in any way the seller from the obligation of testing, inspection and quality control.

#### M. WAIVER

Purchaser's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or purchaser's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

#### N. EQUAL OPPORTUNITY

Vendor agrees to comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, color, national origin, sex, age or because of physical or mental handicap, including Title VII of the Civil Rights Act of 1964 as amended, Executive Orders 10925, 11141 and 11246 as amended. Sections 402 and 503, the regulations at 41 C.F.R. parts 60-1 through 60-60, 60-250 and 60-741, and ASPR 12-802 as modified by ASPR-12-803m which are part of hereof by reference.

#### O. COMPLIANCE

Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations, including EEO and Affirmative Action, to which they are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference, as applicable, including provisions of 38 U.S. Code 4212, Executive Orders 11246, 11375, 11758, 11701, 12086, 13201 (including 29 CFR Part470) as amended, and any subsequent executive orders relating to equal opportunity for employment on government contracts.

## P. NOTES FOR MANUFACTURED PARTS

Unless otherwise specified in the Purchase Order, a Certificate of Conformance is required for all parts and must reference our Purchase Order Number, Part Number, Revision and Serial Number or Lot Number.

Unless otherwise specified in the Purchase Order, Material Certifications are required and must reference our Part Number, Revision, and Purchase Order Number.

Unless otherwise specified in the Purchase Order, Finishing Certifications are required for all processes and must reference process specification, our Part Number, Revision and Serial Number or Lot Number.

All parts must be tagged or otherwise marked with the following information: Part Number, Revision, Purchase Order Number, and Serial Number (if applicable). If Serial Number marking is required, the number sequence will be as specified in the Purchase Order.

## Q. QUALITY CLAUSES

A1) Impellers, Motor Rotors, and other rotating assemblies must be balanced per drawing requirements. Balance certification must be provided that reference the Part Number and the Serial Number.

B1) If no First Article Inspection Report is on file for this Part Number and Revision then:

a) First Production Part: Vendor is to provide a first article inspection report for all drawing dimensions and notes.

b) Remainder of Parts on Purchase Order: Vendor is to provide a critical dimension inspection report for all critical dimensions indicated on the drawing.

All inspection reports must reference Purchase Order Number, Part Number, Revision, and Serial Number or Lot Number.

C1) If a First Article report is on file for this Part Number and Revision, and additional articles are being manufactured without a change in tooling, interruption in machine set up, or changes in CNC programming, then the vendor must provide a critical dimension inspection report for all critical dimensions indicated on the drawing.

All inspection reports must reference Purchase Order Number, Part Number, Revision, and Serial Number or Lot Number.

D1) Non-Conformances:

a) All deviations from Xcelaero drawing requirements must be approved by Xcelaero prior to shipping.

b) All non-standard rework of parts to meet drawing requirements must be approved by Xcelaero prior to implementation.

E1) Factory Visits and Rights to Access: Xcelaero has right of access as required with advance notice.