

Terms and Conditions of Purchase



Hydro-Air Components, Inc. a/k/a Zehnder Rittling ("HAC") purchases goods and services ("Deliverables") only on the terms and conditions herein, which constitute the entire agreement between it and a vendor/seller ("Seller").

1. Offer and Acceptance; Terms Exclusive

This purchase order ("Purchase Order") includes these Terms and Conditions and all specifications, drawings, data and additional or special terms and conditions contained herein, attached hereto or incorporated herein by reference (together, the "Specifications"). ACCEPTANCE OF THIS OFFER IS EXPRESSLY LIMITED TO THESE TERMS AND CONDITIONS. Any additional or different terms proposed by the Seller in any order acknowledgement form, invoice or other writing are rejected and shall not be binding on HAC unless expressly agreed to in writing by HAC. This Purchase Order will be deemed accepted whenever Seller confirms its acceptance of this Purchase Order or commences furnishing any of the Deliverables specified herein. IF THE PURCHASE ORDER IS DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY SELLER, HAC'S ACCEPTANCE IS EXPRESSLY CONDITIONAL ON SELLER'S ASSENT TO THESE TERMS AND CONDITIONS.

2. Purchase Order Number

HAC's Purchase Order number must appear on all invoices, shipping documents, labels and all correspondence and other references thereto.

3. Definitions

The term "Deliverables" means all goods and services to be delivered or provided as specified in this Purchase Order, including by way of example only, all materials and components, design services, automation, manufacturing, installation, inspection, testing and all other materials and labor required to deliver and provide the Deliverables. The term "Loss" means every loss, liability, cost, damage and expense, including attorney's fees and court costs.

4. Time of Performance

Performance of this Purchase Order at the date(s) specified for delivery of the Deliverables is an integral part hereof. Deliverables shall be due no earlier than five (5) days prior to the date specified on the Purchase Order and no later than the date specified on the Purchase order. Seller shall immediately notify HAC in writing of any circumstance, event or occurrence which Seller believes or has reason to believe may result in the inability of Seller to deliver the Deliverables on time. HAC, at its option, may accept delivery at an earlier or later date or dates, but such acceptance shall not be deemed to waive any right or remedy available to HAC under this Purchase Order. HAC shall have the right to take discounts on the basis of the date of delivery or the date of receipt of Seller's invoice, whichever is the latter. If Seller fails to deliver any Deliverables on time, said failure shall constitute a breach, and HAC may, in addition to its other rights and remedies, reject such Deliverables and/or terminate this Purchase Order in whole or in part, and purchase substitute Deliverables elsewhere and charge Seller with any Loss incurred.

5. Delivery; Title; Risk of Loss; Transportation

Deliverables shall be delivered FOB at the place or places specified in this Purchase Order by lowest cost transportation unless HAC otherwise directs. Title to and all risks of loss or damage shall remain with Seller until Deliverables are received by HAC.

6. Force Majeure

In the event of fire, flood, strike, lockout, other labor disturbances, accident, war, disease, government shutdown or any other cause whatsoever beyond the reasonable control of HAC which prevents or interferes with HAC's acceptance or use of the Deliverables or the performance of any other obligation of HAC, HAC may defer such acceptance and/or performance without obligation or liability to Seller.

7. Quantities; Installment; Count

HAC shall have no obligation to accept or pay for any Deliverables delivered or provided by Seller in excess of that specified in this Purchase Order. HAC may return excess Deliverables to Seller, and Seller shall reimburse HAC for all costs or expenses incurred by HAC with respect thereto. If this Purchase Order provides for delivery in multiple installments, Seller's failure to deliver any installment on time shall constitute a breach. HAC's count of Deliverables shall be conclusive unless proven to be manifest error.

8. Prices; Invoices

The price for the Deliverables shall be as set forth on the face of this Purchase Order, and payment thereof shall be made in accordance with the applicable provisions of this Purchase Order, or if none are stated, following the completion of all performance obligations of Seller and within sixty (60) days HAC's receipt of Seller's invoice. All invoices rendered by Seller shall be in accordance with the instructions on the face of this Purchase Order, accompanied by the original bill of lading or express receipt. All invoices shall be in duplicate. Calculations of cash discounts or net payment periods will be made from the date an acceptable invoice is received by HAC. Seller warrants that the price charged to HAC is not higher than Seller's price to other buyers for the same or similar Deliverables.

9. Packaging

All Deliverables shall be packed by Seller in suitable containers for protection in shipment and storage. Prices set forth in this Purchase Order include all charges for Seller's packaging. Items of packaging will not be returned to Seller unless previously agreed to in writing.

10. Taxes; Duties

All federal, state and local taxes, duties and customs fees are included in the price of the Deliverables stated in this Purchase Order, unless otherwise specified.

11. Payment

HAC's check or draft shall be accepted by Seller in payment under this Purchase Order without discounting for any reason. Payment will be in United States Dollars, unless otherwise specified.

12. Warranty

In addition to and without prejudice to all other warranties, expressed or implied by law, Seller warrants that all Deliverables (i) will conform to all Specifications, (ii) will be free from all defects in material and workmanship, (iii) will be fit for the purposes for which they are intended, and (iv) will comply with all applicable federal, state and local codes, ordinances, rules and regulations (including, without limitation, the Occupational Health and Safety Act of 1970, all applicable environmental laws, and all rules and regulations related to each). All warranties, express or implied, shall survive inspection, acceptance and payment. In the event of Seller's breach of any such warranty, in addition to other rights and remedies available to HAC, at law or in equity, HAC may return Deliverables for a full refund, or direct Seller to promptly correct the breach by repairing or replacing the applicable Deliverables. HAC reserves the right to repair, alter or modify, at Seller's cost, Deliverables which fail to conform with the terms, conditions and Specifications of this Purchase Order when the same can be done by HAC at a lesser cost than by returning the Deliverables to Seller. Seller warrants that it has and will convey to HAC good and marketable title to the Deliverables and that all Deliverables are and shall be free from any liens or claims of any other person or entity.

13. Acceptance; Inspection

All Deliverables shall be subject to inspection and acceptance or rejection by HAC within a reasonable time after delivery. Payment for Deliverables shall not be deemed acceptance thereof. HAC may return to Seller, at Seller's expense, Deliverables which fail to meet any of the terms, conditions or Specifications of this Purchase Order. HAC shall also have the right of inspection, at its expense, at Seller's facility at any reasonable time. No such inspection shall be deemed or construed to be an acceptance of the Deliverables or HAC's right to inspect the same on delivery as provided above.

14. Default; Breach; Negligence; Seller's Liability

HAC may terminate the Purchase Order or any part thereof for any default or breach, including any failure by Seller to comply with the Purchase Order or any of the these terms and conditions. Seller shall indemnify and hold HAC harmless from and against each and every Loss, including incidental and consequential damages incurred or suffered by HAC which are or are claimed to be in any manner, directly or indirectly, in whole or in part caused, contributed to or occasioned by reason of Seller's default or breach of any representation, warranty, obligation or covenant of Seller contained in this Purchase Order, or Seller's performance or failure to perform hereunder, or its negligence whether active or passive, and without limiting its generality, the foregoing shall include injury to or death of any person or persons and damage to or loss of property. HAC shall have the right to cancel this Purchase Order without obligation or liability to Seller in the event of Seller's breach of any of the terms and conditions hereof or in the event of the institution of any proceedings by or against Seller, voluntary or involuntary, under bankruptcy or insolvency laws, or the appointment of a receiver or trustee or an assignee for the benefit of creditors. IN NO EVENT SHALL HAC BE LIABLE FOR ANY EXTRAORDINARY, EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, EVEN IF HAC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

15. Changes; Cancellation

HAC may at any time, upon notice to Seller, terminate, reduce or make changes to this Purchase Order in regards to shipping instructions, quantities and delivery schedules. Upon such notice being given, Seller shall proceed promptly to make such changes in accordance with the terms of HAC's change order, including, without limitation, ceasing work in the case of a termination (including the manufacturing and/or procuring of materials for the fulfillment of this Purchase Order) in accordance with and to the extent specified in such notice. In such event, all work completed by Seller hereunder before the giving of such notice, shall be paid for on a percentage of completion basis (subject to acceptance by HAC in accordance with the provisions of this Purchase Order as herein provided). In no case shall Seller be entitled to be reimbursed for any amount which, taken together with any amounts paid or due or becoming due to Seller under this Purchase Order, shall exceed the aggregate original purchase price of the Deliverables being purchased.

16. Intellectual Property; Title

Seller warrants that the Deliverables being purchased do not infringe any United States or foreign letters patent, copyrights or other intellectual property right of any other person or entity, and Seller shall defend, indemnify, and hold harmless HAC from and against each and every Loss incurred or suffered by HAC which arise directly or indirectly out of or in connection with any allegation, claim or charge that any Deliverables furnished by Seller to HAC, or the use of the same constitutes an infringement of any patent or patent right, copyright, trademark or other proprietary right or interest of any other person or entity. In the event of any such allegation, claim or charge, HAC may also cancel this Purchase Order without obligation or liability to Seller.

17. Drawings, Tools, Etc.

All drawings, blueprints, computer aided design files, patterns, scientific or technical data, tools, samples, and similar items ("Related Data") furnished by HAC in connection with this Purchase Order shall remain HAC's property and shall be returned to HAC on completion of delivery of the Deliverables or upon HAC's earlier demand. Any Related Data produced or furnished by Seller shall become HAC's property and delivered to HAC with the Deliverables.

18. Confidentiality; Publicity

The terms and conditions of this Purchase Order shall be kept confidential. Seller shall take all reasonable measures to insure that the contents hereof, including all Specifications and all Related Data, shall be kept confidential and not disclosed to anyone either within or without Seller's organization except on a strict need to know basis and shall not be used by Seller in any manner other than for the benefit of HAC. Seller shall not issue any publicity or advertising relating to this Purchase Order or the Deliverables being provided to HAC without HAC's prior written consent.

19. Non-Discrimination in Employment

Seller shall comply with all applicable non discrimination and equal opportunity laws and regulations.

20. Advance Manufacturing and Shipments

Seller shall not manufacture HAC's goods in advance of Seller's normal lead time or deliver any goods in advance of HAC's designated delivery date without HAC's written consent. At Seller's expense, HAC reserves the right to return all goods received in advance of HAC's designated delivery date on this purchase order.

21. Insurance

Seller shall maintain in full force and effect for no fewer than six (6) years following the acceptance of this Purchase Order, one or more liability insurance policies providing coverage against bodily injury, property damage and other damages which HAC may incur arising out of the manufacture, use or delivery of any Deliverables hereunder, or any negligent or willful act of Seller related to any Deliverable, such policy or policies to provide, in the aggregate, no less than \$3,000,000 of combined single limit coverage. Upon request, Seller shall promptly deliver to HAC certificates of insurance issued by the carrier(s) of such policies which shall provide in part that no such policy shall be terminated upon less than thirty days prior written notice to HAC and that HAC is a named insured on such policies, as its interest may appear.

22. Books and Records

In the event the purchase price of the Deliverables being purchased is specified to be computed on a "cost plus" basis, Seller shall maintain accurate and complete books and records with respect to the cost of the manufacturer and/or rendering of such Deliverables and shall retain complete and accurate copies of all invoices, receipts, vouchers, etc. relating thereto. Seller, upon request, shall supply HAC or HAC's representatives with access to all such books and records, as they may relate to the Deliverables being purchased hereunder, from time to time, during regular business hours. HAC shall be entitled to make and retain copies of any or all such books or records, invoices, receipts or vouchers.

23. Financial Responsibility

Seller warrants that it has and will at all times maintain, and upon request by HAC, show that it has sufficient working capital and financial ability to perform and complete this Purchase Order. By accepting this Purchase Order in writing or commencing furnishing any of the Deliverables specified herein, Seller warrants to HAC that it is not insolvent within the meaning of the federal bankruptcy laws and the laws of the states in which it conducts its business. In addition to any and all other rights and remedies which HAC may have pursuant to this Purchase Order or at common law, HAC reserves the right to terminate this Purchase Order without liability in respect of any undelivered or incomplete Deliverables if Seller shall (i) become insolvent or bankrupt, (ii) make any general assignment for the benefit of its creditors, (iii) if any trustee or receiver is appointed of any substantial part of Seller's assets or (iv) Seller shall be adjudicated a bankrupt.

24. Notices

Any and all notices required to be given hereunder shall be in writing and hand delivered (including by commercial courier), with an appropriate receipt thereof obtained, or sent by United States certified mail, return receipt requested, to the addresses of the respective parties set forth on the Purchase Order, and with respect to HAC to the attention of its "Material Manager", or to such other address as either party may designate to the other by written notice for such purpose from time to time.

25. Non-Waiver

HAC's exercise or failure to exercise or enforce any right or remedy granted or provided by this Purchase Order or its acceptance of or payment for any Deliverables shall not be deemed as or construed to be a waiver of any right or remedy it may have for Seller's then existing or subsequent default or breach of any representation, warranty, obligation or covenant applicable to this Purchase Order.

26. Assignment

Neither this Purchase Order in its entirety nor any rights or interest herein may be assigned or otherwise transferred by Seller directly or by operation of law without the written agreement of HAC. Any such attempted assignment or transfer shall be void.

27. Law Governing

This Purchase Order shall be governed by and construed in accordance with the laws of the State of New York. All disputes between HAC and Seller relating to the subject matter of this Purchase Order or the Deliverables shall be resolved exclusively in the Federal and State courts located in Erie County, New York, and Seller consents to the personal jurisdiction of such courts.

28. Entire Agreement

This Purchase Order constitutes the sole and entire agreement between HAC and Seller with respect to the subject matter hereof, and any prior or contemporaneous understandings or agreements, oral or written are merged herein. No subsequent changes or modifications of this Purchase Order are binding upon HAC unless accepted by it in writing. Seller expressly waives all provisions contained in correspondence, forms or other writings relating to the sale of the Deliverables covered by this Purchase Order which negate, limit, extend or conflict with the provisions thereof. In the event any term or provision hereof shall be deemed unenforceable, the remaining terms and conditions shall remain in effect to the fullest extent possible.

