

Commercial Goods or Services Terms and Conditions

DZYNE TECHNOLOGIES INCORPORATED TERMS AND CONDITIONS

1. **Applicability** - The purchase order to which these terms and conditions relate is an offer by DZYNE Technologies Incorporated, a Delaware corporation (“Buyer”) for the purchase of the goods or services specified on the face of such purchase order (the “Goods”) from the seller on the face of the purchase order (“Seller”) in accordance with and subject to these terms and conditions (the “Terms”; together with the terms and conditions on the face of such purchase order, the “Order”). The Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Seller’s acceptance to the terms of the Order. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Buyer’s general terms and conditions of sale or any other document issued by Seller in connection with the Order.

2. **Acceptance** - Buyer and Seller shall be bound by the Order only when Seller: (i) executes and returns the acknowledgment; (ii) commences work pursuant to the Order; (iii) delivers to Buyer any one of the items ordered; or (iv) renders for Buyer any of the services ordered. Buyer may withdraw the Order at any time before it is accepted by Seller.

3. **Delivery Date** - Seller shall deliver the Goods in the quantities and on the date(s) specified in the Order or as otherwise agreed in writing by the parties (the “Delivery Date”). Timely delivery of the Goods is of the essence. If Seller fails to deliver the Goods in full on the Delivery Date, Buyer may terminate the Order immediately by providing written notice to Seller and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to deliver the Goods on the Delivery Date.

4. **Quantity** - If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller’s risk and expense. If Buyer does not reject the Goods and instead accepts delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

5. **Delivery Location** - All Goods shall be delivered to the address specified in the Order (the “Delivery Location”) during Buyer’s normal business hours or as otherwise instructed by Buyer.

6. **Shipping Terms** - Delivery shall be made FOB Delivery Location, OR in accordance with the terms on the Order. Seller shall give written notice of shipment to Buyer when the Goods are delivered to a carrier for transportation. Seller shall provide Buyer all shipping documents,

including the commercial invoice, packing list, bill of lading and any other documents necessary to release the Goods to Buyer within two business days after Seller delivers the Goods to the transportation carrier. The Order number must appear on all shipping documents, shipping labels, bills of lading, invoices, correspondence and any other documents pertaining to the Order.

7. Title and Risk of Loss - Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location unless noted on the purchase order.

8. Packaging. All shipments must be packaged to permit efficient handling and provide protection in shipment in accordance with carrier regulations. Buyer's Order No., government contract numbers and Seller's packing list number must be shown on all invoices and packing lists. The Order number and Seller's packing list numbers must appear on all bills of lading. Buyer's count or weight will be conclusive on shipments not accompanied by the packing list. Seller shall issue an individual invoice for each shipment. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

9. Amendment and Modification - No change to the Order is binding upon Buyer unless it is in writing, specifically states that it amends the Order and is signed by an authorized representative of Buyer. Buyer may at any time by written notice make changes within the general scope of the Order in (i) shipping, and packaging instructions, and (ii) the place of delivery and Seller shall promptly proceed with the Order as changed. If any such change increases or decreases the cost of, or the time required for, the performance of the Order, an equitable adjustment in the price or delivery schedule, or both, will be made. Claim for such an adjustment must be made in writing within 30 days from the date the change is ordered, together with a cost breakdown or other facts to support such claim. Where the cost of property made obsolete or excess as a result of a change order is included in Seller's claim for adjustment, Buyer shall have the right to prescribe the manner of disposition of such property.

10. Standards of Work - Seller agrees that the performance of work and services pursuant to the requirements of the Order shall conform to high professional standards. Quality Codes and Requirements on the face of the Order and or drawings / specifications shall apply. Seller agrees to abide by the Supplier's Code of Conduct found under supplier portal - Terms and Conditions. WWW.DZYNETECH.COM.

11. Inspection and Rejection of Nonconforming Goods –

a. All items shall be subject to inspection and test at all practicable times and places, including the period of manufacture, by Buyer and, if there is a Federal Prime Contract number on the face of the Order, the Government, but such inspections and tests shall be so performed as not to unduly delay the work. If such inspections or tests are made on Seller's premises, Seller shall provide without charge reasonable facilities and assistance for the inspectors. All items are also subject to final inspection and acceptance at Buyer's plant within a reasonable time after delivery notwithstanding any prior payments or other inspections.

b. Buyer, at its sole option, may inspect all or a sample of the Goods, and may reject all or any portion of the Goods if it determines the Goods are nonconforming or defective. If Buyer rejects any portion of the Goods, Buyer has the right, effective upon written notice to Seller, to: (i) rescind the Order in its entirety; (ii) accept the Goods at a reasonably reduced price; or (iii) reject the Goods and require replacement of the rejected Goods. If Buyer requires replacement of the Goods, Seller shall, at its expense, promptly replace the nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective goods and the delivery of replacement Goods. If Seller fails to timely deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate the Order for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller's obligations under the Order, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

12. **Price** - The price of the Goods is the price stated in the Order (the "Price"). If no price is included in the Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Order. Unless otherwise specified in the Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs duties and fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

13. **Payment Terms** - Seller shall issue an invoice to Buyer on or any time after the completion of delivery and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within 30 days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. All payments hereunder must be in US dollars.

14. **Set-off** - Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller under the Order.

15. **Warranties** - Seller warrants to Buyer that for a minimum period of 90 days from the Delivery Date, all Goods will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer; (c) be fit for their intended purpose and operate as intended; (d) be merchantable; (e) be free and clear of all liens, security interests or other encumbrances; and (f) not infringe or misappropriate any third party's patent or other intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods by Buyer. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer's discovery of the noncompliance of the Goods with the foregoing warranties. If Buyer gives Seller notice of noncompliance with this Section, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Goods to Buyer. All warranties of Seller, whether created expressly by law or in fact, are incorporated herein by reference and shall include, and are supplemented by, the foregoing express warranties.

16. General Indemnification - Seller shall defend, indemnify and hold harmless Buyer its subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders and employees and Buyer's customers (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, "Losses") arising out of or occurring in connection with the products purchased from Seller or Seller's negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

17. Patent Indemnity - Except where items are made entirely to Buyer's design, Seller shall, at its expense, hold harmless and defend Buyer, its customers and all parties claiming under buyer against any loss, damage or liability which may be incurred on account of any claim or judgment involving infringement of any U.S. patent, copyright or trademark in the manufacture, use or disposition of any item supplied hereunder. Buyer shall notify Seller promptly of any suit instituted against Buyer and, to the full extent of its ability to do so, permit Seller to defend or settle same. In no event shall Seller enter into any settlement without Buyer's or Indemnitee's prior written consent.

18. Tooling and Test Equipment – (if applicable) If the Price is stated to include jigs, dies, fixtures, patterns, or special test equipment and manufacturing aids used in manufacture of the items and drawings thereof (all hereinafter called tooling), such tooling becomes the property of Buyer or its customer immediately upon payment thereof. Tooling shall be used only for the benefit of Buyer or any of its customers, which have acquired the right to use such tooling. Tooling shall be kept in good condition, including necessary replacement, without expense to Buyer. Buyer shall pay for changes of design. Seller shall maintain proper property control records for such tooling and shall promptly furnish Buyer a list thereof on request. Unless otherwise directed by Buyer, upon completion or termination of the Order, Seller shall hold all tooling free of charge for six months subsequent to furnishing an inventory to Buyer with a request for disposition; any such tooling Buyer orders returned shall be delivered FOB Seller's facility, properly crated for domestic shipment. No crating charge is to be included in Seller's quotations unless expressly requested by Buyer.

19. Termination -

a. By written notice to Seller of default, Buyer may terminate the Order in whole or in part if Seller becomes the subject of a proceeding under state or federal law for relief of creditors or makes an assignment for benefit of creditors, or if Seller fails to comply with any of its obligations under the Order. In such event, Buyer may purchase similar items elsewhere, and Seller shall be liable for any reasonable excess costs occasioned Buyer thereby. A waiver of a breach of any provision of the Order shall not constitute a waiver of any other breach. If, after notice of default issued hereunder, it is determined that Seller's failure to perform the Order was due to unforeseeable causes beyond the control and without the fault of Seller, the rights and obligations of the parties shall be governed by paragraph (b) of this Section. The rights and remedies of Buyer under this Section are not exclusive and are in addition to any other rights and remedies afforded Buyer by law or under the Order.

b. Buyer may terminate performance or work under the Order in whole or in part by written notice of termination, whereupon Seller will stop work on the date and to the extent specified in the notice and terminate all orders and subcontracts to the extent they relate to the terminated work. Within 60 days after receipt of such notice of termination, Seller will submit all its claims resulting from such termination. Buyer will have the right to check such claims at any reasonable time or times by inspecting and auditing the records, facilities, and work on materials of Seller relating to the Order. Payment made under this Section constitutes the Buyer's only liability in the event the Order is terminated hereunder. Seller will Deliver all Work Product and Materials generated up to the date of termination. All title in Work Product and Materials will pass to the Buyer.

20. Reproduction Rights – (for non-commercial goods) Seller grants Buyer the right to reproduce, use and disclose the reports, drawings, software and other data to be delivered by Seller to Buyer under the Order, but Buyer may not use same to produce items for sale in competition with Seller.

21. Insurance - During the term of the Order and for a period of one year thereafter, Seller shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance from Seller's insurer evidencing the insurance coverage specified in the Order. The certificate of insurance shall name Buyer as an additional insured. Seller shall provide Buyer with 30 days' advance written notice in the event of a cancellation or material change in Seller's insurance policy. Except where prohibited by law, Seller shall require its insurer to waive all rights of subrogation against Buyer's insurers and Buyer or the Indemnitees.

22. Waiver - No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

23. Confidential Information - All non-public, confidential or proprietary information of Buyer, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with the Order is confidential, solely for the use of performing the Order and may not be disclosed or copied unless authorized by Buyer in writing. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Seller at the time of disclosure; or (c) rightfully obtained by the Seller on a non-confidential basis from a third party.

24. Assignment - Seller shall not assign, transfer, delegate or subcontract any of its rights or

obligations under the Order without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder.

25. Severability - If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival - Provisions of the Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of the Order.

27. Relationship of the Parties - The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. No relationship of exclusivity shall be construed from the Order.

28. Compliance with Law - In performance of the work and shipment of Goods covered by the Order, Seller agrees to comply (and to bear all expense required for compliance) with the Fair Labor Standards Act of 1938, as amended, and regulations thereunder, all applicable provisions of the Walsh-Healy Act, the Buy American Act, the Occupational Safety and Health Act, the Equal Employment Act of 1972 and regulations thereunder, and all other applicable federal, state and local laws, rules, regulations and orders, and agrees to indemnify Buyer against any loss, cost, liability or damage whatsoever, including attorney's fees, which may result from Seller's violation of this Section.

29. Disputes - Any dispute arising under this order which is not settled by agreement of the parties may be settled under the American Arbitration Association Commercial Rules; proceedings will be held in Orange County, California. Pending any decision, appeal or judgment in such proceedings, or the settlement of any dispute arising under this order, Seller shall proceed diligently with the performance of the Order in accordance with the decision and instruction of Buyer.

30. Government Contracts - If the face of this Order contains a Government Contract Number, Seller shall provide the Goods and services set forth in the Order in compliance with the "required" and/or "required when applicable" provisions and clauses (collectively, the "Applicable Clauses") contained in the agreement between Buyer and its customer, which are hereby incorporated by reference and made a part of this Order. Seller agrees that Buyer's obligations to its customer under these Applicable Clauses flow down to the Seller, such that the Seller shall be obligated to perform this Order under these terms and conditions. The Applicable Clauses are available for Seller's review upon Seller's request, and Seller agrees that prior to acceptance of any Order, Seller will carefully read and review the Applicable Clauses. To the extent of any conflict or ambiguity between the Applicable Clauses and the Order, where a provision relates to criteria for quantity or quality of workmanship, materials, equipment, or standard of performance of the Goods or services, the greater quantity and higher quality shall govern. Any reference in the Applicable Clauses to a time period for compliance with reporting

or notifications flowed down to Seller shall be adjusted by decreasing the response time by 7 calendar days so as to allow Buyer adequate time to comply at the higher tier. If the Seller receives written consent from the Buyer to subcontract any portion of this order, Seller shall include in each lower-tier subcontract the appropriate flow down clauses as required by FAR and DFARS. Except as may be expressly set for in this document with the U.S. Government Contracting Officer's express consent, the seller shall not acquire a direct claim or direct course of action against the U.S. Government.

31. Counterfeit Parts - Seller represents and warrants that only new and authentic materials are used in products to be delivered and that work delivered contains no counterfeit parts. No other material or part, other than a new and authentic part is to be used unless approved in advance in writing.

32. Use of the Work Product - Subcontractor shall not make any use of the work effort produced under the Order unless and until it has received the written permission of Contractor to do so. The withholding of such permission by Contractor is final and conclusive, and not an arbitral question of fact under Section 28 or subject to court review. The title to all such work efforts is in Contractor.

33. Order of Precedence - In the event of any ambiguity or inconsistency in the Order, unless otherwise provided herein, the inconsistency or ambiguity shall be resolved by giving precedence in the following order to the various documents making up the Order:

1. The provisions of the awarded Prime Contract and/or Subcontract; As listed below or attached or made part of this agreement.
2. Applicable Clauses contained in the agreement between Buyer and its customer;
3. General Terms and Conditions contained in this Order; and
4. Any other applicable Terms and Conditions agreed to between Buyer and Seller

If an exhibit is attached or flow downs provided the below FAR clause applies:

52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the awarding contracting officer will make the full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<https://www.acquisition.gov/browse/index/far>

<https://www.acquisition.gov/dfars>