



## **MASTER TERMS AND CONDITIONS OF SALE**

All orders placed for products (the "Products") and services (the "Services") of Pole/Zero Acquisition, Inc., a Delaware corporation dba Pole/Zero Corporation ("Pole/Zero") shall be subject to these Master Terms and Conditions of Sale and any Schedules attached hereto (collectively, these "Terms") and the order confirmation from Pole/Zero accepting the order for the Products and/or Services (the "Order Confirmation", collectively with these Terms, the "Contract") whether or not specifically referred to. If any provision in the Order Confirmation is inconsistent with these Terms, the provision in the Order Confirmation shall govern. No additional or different terms or conditions or any modifications, changes or amendments to the Contract shall be binding upon Pole/Zero unless specifically agreed to in writing by an authorized representative of Pole/Zero. Any additional or different terms already or hereafter proposed by Buyer, whether in a purchase order or other communication or otherwise, are hereby rejected and shall not apply. The lack of objection by Pole/Zero to any additional, modifying or deleting provisions contained in any communications from Buyer shall not be construed either as a waiver of the terms of the Contract or as an acceptance by Pole/Zero of any deviation from the terms of the Contract.

**1. Orders and Prices:** All price and delivery quotations made by Pole/Zero are conditioned upon these Terms. No order shall be binding upon Pole/Zero until received and accepted by an authorized representative of Pole/Zero. Any Contract(s) resulting from acceptance of any order(s) placed with Pole/Zero may only be modified or rescinded by a written document, signed by the duly authorized representatives of both parties. Prices are subject to change without notice, provided that Pole/Zero shall not change the prices of any Products and/or Services subject to an accepted order. Price quotations, unless otherwise stated, shall automatically expire 30 calendar days from the date issued and may be terminated at any time upon notice to Buyer. All prices listed in Pole/Zero publications are intended as a source of general information only and not as an offer to sell, and all prices contained therein are subject to confirmation by formal quotation by Pole/Zero. Prices do not include transportation charges, insurance costs, export/import duties, licenses or fees, or any tax or governmental charge of any nature whatsoever.

**2. Taxes, Fees and Duties:** Any applicable taxes, fees and duties shall be paid by Buyer, either directly or by reimbursement to Pole/Zero. Any claim for exemption by Buyer shall, if applicable, be effective only after receipt of proper exemption forms by Pole/Zero, but in no event after delivery or performance.

**3. Shipment and Delivery:** Unless otherwise agreed in writing between the parties, any Products shall be delivered ex works, Pole/Zero's facility (the term "ex works" as used herein shall be interpreted in accordance with Incoterms 2010). If Products are delivered ex works, Pole/Zero shall provide written notice to Buyer that the Products are available for shipping at the delivery point (the "Availability Notice"); Buyer shall take delivery of the Products within 7 days of Pole/Zero's Availability Notice. If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to the Availability Notice, or if Pole/Zero is unable to deliver the Products to the delivery point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Pole/Zero, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

Title to all Products shall pass to Buyer upon delivery to Buyer at the delivery point. All Products shall be packaged and packed for shipment in accordance with appropriate commercial practices. Claims for shortages and other error in delivery must be made in writing to Pole/Zero within 10 days after the carrier designated by Buyer delivers the Products to the location specified by Buyer to carrier and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

Pole/Zero reserves the right to make delivery in installments, unless otherwise expressly agreed to in the Contract; 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 Buyer's obligations to accept remaining deliveries.

Pole/Zero shall use reasonable efforts to comply with the delivery date specified herein (if any), but any such date is an estimate only, unless otherwise agreed in writing by the parties.

**4. Terms of Payment:** Unless specified otherwise by Pole/Zero, all Products and/or Services shall be invoiced upon delivery to Buyer or upon completion of performance. Payment of the amount specified in the invoice shall be due within 30 days from the date of invoice and shall be subject to interest on the unpaid balance at the maximum rate permitted by law. Buyer shall make all payments hereunder in U.S. dollars. Buyer shall reimburse Pole/Zero for all collection costs, court costs, administration costs, investigation costs, attorneys' fees and all other incidental costs, charges or expenses incurred in the collection of past due amounts or otherwise resulting or arising from any breach by Buyer of the Contract. In addition to all other remedies available under the Contract or at law (which Pole/Zero does not waive by the exercise of any rights under the Contract), Pole/Zero shall be entitled to suspend the delivery of any Products or provision of any Services, under this or any other Contract between the parties, if Buyer fails to pay any amount when due hereunder and such failure continues for 5 days following written notice thereof. Buyer shall not withhold payment of any amount due and payable by reason of any set-off of any claim or dispute with Pole/Zero, whether relating to Pole/Zero's breach, bankruptcy or otherwise.

### **5. Warranty:**

**(a) New Products:** Pole/Zero warrants that new Products delivered under the Contract shall be free from material defects in materials and workmanship and that Services provided under this Contract shall be performed in a workmanlike manner and according to industry standards, and Pole/Zero will, at its option, repair, correct or replace any Product and/or Service which violates this warranty, provided that Pole/Zero is given written notice of any such defect no later than 1 year after delivery or performance by Pole/Zero. Pole/Zero may, at its option, participate in the defect investigation of the Product and/or Service at the installation site and repair, correct or replace the defective Product and/or Service at such site or at its designated facility. Defective Products covered by this warranty may be returned to Pole/Zero at Pole/Zero's expense if agreed to in advance in writing by Pole/Zero. Repair, correction or replacement in the manner provided above shall constitute fulfillment of all Pole/Zero's obligations under this warranty. This warranty shall not apply to any equipment or parts which have been subjected to accident, misuse or unauthorized alteration, to normal wear (which includes components with innate limited life) or to defects caused by not complying with Pole/Zero's installation and service requirements (if the failed equipment or parts were not installed by Pole/Zero). This warranty shall apply to and include correction of technical data or firmware pertinent to defective Products to the extent delineated hereinabove.



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THE REMEDIES SET FORTH ABOVE SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND POLE/ZERO'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 5A. POLE/ZERO MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, WITH RESPECT TO PRODUCTS AND/OR SERVICES INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHER WARRANTY OF QUALITY.

Products manufactured by or Services performed by a third party ("Third Party Product") may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Products and/or Services. Third Party Products are not covered by the warranty in this section 5a. Any warranties made or given by such third parties for the Third Party Products which are assignable by their terms are hereby assigned to Buyer. FOR THE AVOIDANCE OF DOUBT, POLE/ZERO MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(b) **Repaired Products:** Repairs, for which Buyer has paid a fee, will be warranted as set forth in section 5a for a period of 90 days from shipment or performance date. Warranty for paid repairs are exclusively limited to repaired or replaced material and/or workmanship specific to the repairs performed, and does not extend the warranty of the repaired Product and/or Services. With the exception of warranty period and specific coverage as defined in this section 5b, all other warranty terms shall apply as defined in section 5a. Buyer acknowledges and agrees that repairs to any Products and/or Services not covered by a warranty under this section 5, including any shipping charges, will be at Buyer's sole cost. If the Product and/or Service is outside of the warranty period, it may be determined that an initial evaluation fee is required to proceed with the failure analysis. Pole/Zero's Test and Evaluation Department utilizes a uniform evaluation charge based on the complexity of the Product and/or Service in order to complete a repair estimate. In addition, an order needs to be issued to reflect the appropriate amount, before an RMA number will be issued and repairs started. An estimate to complete the repair (if additional time is required) will be provided at the conclusion of the evaluation effort. While it is possible that the Product and/or Service may be repaired during that evaluation, it is also possible that it may be deemed 'un-repairable' based on its condition.

**6. Intellectual Property Rights:** All intellectual property rights in, or relating to, the Products and/or Services are owned by or licensed to Pole/Zero and nothing herein shall have the effect of transferring the ownership of such intellectual property rights to Buyer.

In the event of any third party demand, claim or action alleging that the proper use of the Products and/or Services by Buyer in accordance with any instructions and directions issued with or in relation to such Products and/or Services by Pole/Zero infringes any patent or other intellectual property right belonging to a third party, Buyer shall: (i) promptly notify Pole/Zero in writing of such claim; (ii) not make any admission in relation to or attempt to settle or compromise the claim; (iii) give Pole/Zero express authority to conduct all negotiations and litigation, and to settle all litigation, arising from such claim; and (iv) provide Pole/Zero with all available information, documents and assistance as Pole/Zero may reasonably require, including without limitation ceasing to use the Products and/or Services if deemed reasonably necessary

by Pole/Zero until the infringement claim is resolved. Pole/Zero may also, at any time, at its option: (i) procure for Buyer the right to continue to use the Products and/or Services in question, free of any liability for such infringement; or (ii) direct Buyer to cease use of and not market or sell such Products and/or Services and (a) modify the Products and/or Services in question so that they become non-infringing; (b) substitute the Products and/or Services in question with functionally equivalent non-infringing Products and/or Services; or (c) refund the price paid by Buyer for the infringing Products and/or Services. This section states the entire liability of Pole/Zero for any infringement of third party intellectual property rights.

Buyer shall indemnify Pole/Zero from and against all losses, damages, costs, liabilities and expenses (including legal expenses) arising out of or in connection with any third party demand, claim or action alleging that any Product manufactured or Service provided by Pole/Zero in accordance with designs and/or specifications provided to Pole/Zero by Buyer infringes any patent or other intellectual property right belonging to a third party.

**7. Confidential Information:** A party (the "Receiving Party") shall keep in strict confidence all information which is of a confidential nature (including any technical or commercial know-how, specifications, inventions, processes or initiatives) and has been disclosed to the Receiving Party by the other party (the "Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall remain liable for a breach of such obligations by the Receiving Party's employees, agents and subcontractors. The Receiving Party shall only use or make copies of confidential information (including any reproductions, extracts or analyses of that confidential information) in connection with and to the extent necessary for the purposes of the Contract.

Certain information provided to Receiving Party may be subject to export controls identified in the EAR (Export Administration Regulations) administered by the U.S. Department of Commerce and/or ITAR (International Traffic in Arms Regulations) administered by the U.S. Department of State. Export controls apply to hardware and technical data (including, but not limited to, drawings, specifications, source control documents, etc). Release of this information to foreign nationals is governed by U.S. law and may require a license or other documentation. Receiving Party agrees to comply with all applicable laws and to direct its representatives to comply with all applicable laws, including EAR and ITAR, with respect to all information provided to it and its representatives by Disclosing Party and its representatives.

**8. Force Majeure:** Pole/Zero shall not be liable for damages under the Contract for a delay or failure in its performance under the Contract as a result of causes beyond its reasonable control, including any law, order, regulation, direction, or request of any government having or claiming to have jurisdiction over Pole/Zero, its subcontractors and/or its suppliers; failure or delay of transportation; insurrection, riots, national emergencies, war, acts of public enemies, strikes or inability to obtain necessary labor, manufacturing facilities, material or components from Pole/Zero's usual sources; fires, floods or other catastrophes; acts of God, acts of omissions of Buyer or any causes beyond the reasonable control of Pole/Zero and/or of its suppliers. Upon the giving of prompt written notice to Buyer of any such causes of a delay or failure in its performance of any obligation under the Contract, the time of performance by



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Pole/Zero shall be extended to the extent and for the period that its performance of said obligations is prevented by such cause.

**9. Limitation of Liability:** POLE/ZERO SHALL NOT BE RESPONSIBLE TO BUYER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF WHATSOEVER NATURE, OR FOR ATTORNEY'S FEES, LOSS OF USE, LOSS OF MARKET SHARE, OR LOST PROFITS HOWSOEVER THESE MAY BE CHARACTERIZED. IN NO EVENT SHALL POLE/ZERO BE LIABLE TO BUYER FOR ANY AMOUNT WHICH IN COMBINATION WITH ALL CLAIMS BY BUYER AGAINST POLE/ZERO RELATED TO THE CONTRACT EXCEEDS THE PRICE OF THE PRODUCTS AND/OR SERVICES. IN ANY EVENT, THE LIABILITY OF POLE/ZERO TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) UNDER ANY WARRANTY OR OTHERWISE, IS EXCLUSIVELY LIMITED TO THE REMEDIES EXPRESSLY PROVIDED UNDER THE TERMS OF THE CONTRACT, IN LIEU OF ANY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY.

**10. Indemnity:** EXCEPT AS OTHERWISE PROVIDED OR LIMITED IN THE CONTRACT, BUYER SHALL INDEMNIFY AND HOLD HARMLESS POLE/ZERO AGAINST ANY AND ALL LOSSES, DAMAGES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND OTHER COSTS OF DEFENDING ANY ACTION) THAT IT MAY SUSTAIN OR INCUR AS A RESULT OF THE USE, OPERATION OR POSSESSION OF THE PRODUCTS AND/OR SERVICES BY BUYER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES, THE NEGLIGENT OR WILLFUL ACT OR NEGLIGENT OR WILLFUL OMISSION OF BUYER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES OR THE ALTERATION OR MODIFICATION OF THE PRODUCTS AND/OR SERVICES OR THE USE OR COMBINATION OF THE PRODUCTS AND/OR SERVICES WITH OTHER PRODUCTS, DEVICES OR SERVICES BY BUYER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES.

**11. Security Interest:** As collateral security for the payment of the purchase price of the Products and/or Services, Buyer hereby grants to Pole/Zero a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products sold hereunder, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this section constitutes a purchase money security interest under the applicable Uniform Commercial Code.

**12. Applicable Laws:** In performing its obligations and exercising its rights under the Contract, Buyer shall, at all times, act ethically and in compliance with all applicable laws of the United States and any jurisdiction in which Buyer is established or conducts operations relating to the Contract, including (without limitation) any applicable laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering and any applicable laws in force from time to time regarding import/export regulations, tax and/or customs and duties (the "Import/Export Legislation").

Any orders for Products to be exported from the U.S. shall be accepted subject to U.S. Government approval for export where applicable. Buyer expressly acknowledges that a Product (including any technical information related to such Product) may also be subject to the Import/Export Legislation of the country into which the Product is sold, and the Buyer shall abide by such Import/Export Legislation. Buyer shall ensure that the Products (including any technical information related to such Product), and any other products or technology acquired from Pole/Zero under the Contract, will not

be exported, sold, diverted, transferred or otherwise disposed of in violation of the Import/Export Legislation, either in their original form or after being incorporated into other products or as part of a resale by Buyer.

**13. Data Security:** Buyer shall fully comply with the data protection and privacy legislation in all relevant countries and shall ensure that its employees, agents and contractors observe the provisions of that legislation. Buyer represents that it has developed and implemented and covenants that it will maintain effective information security policies and procedures that include administrative, technical and physical safeguards designed to (i) ensure the confidentiality, security, integrity and availability of Pole/Zero's confidential information provided hereunder; (ii) protect against anticipated threats or hazards to the confidentiality, security, integrity and availability of such information; (iii) protect against unauthorized access or use of such information; and (iv) ensure the proper disposal of such information. Buyer shall promptly notify Pole/Zero of any breach of confidentiality by Buyer or any of its agents, disclosure of Pole/Zero's confidential information by Buyer or one of its agents or a breach of Buyer's information security policies or procedures. Notice shall be provided to Pole/Zero no later than 24 hours upon discovery of breach.

**14. Nonsolicitation:** Beginning on the effective date of the Contract and continuing until the date that is 1 year after the date of the last purchase order submitted by Buyer to Pole/Zero, Buyer shall not directly or indirectly solicit for employment or hire any employee of Pole/Zero with whom Buyer has had contact or who became known to Buyer in connection with the Contract.

**15. Governing Law/Venue:** The Contract shall be governed by and be construed in accordance with the laws of the State of New York, without giving effect to any choice of law rules. To the extent applicable, each party expressly consents to the exclusive jurisdiction of the federal, state and local courts in the State of New York, to govern all disputes arising out of the Contract.

**16. Termination:** Upon a material breach of the Contract, in addition to any remedies that may be provided under the Contract, Pole/Zero reserves the right to suspend fulfillment of or terminate the Contract and any other outstanding contracts with immediate effect upon written notice to Buyer.

**17. \*Termination for convenience :** If the Buyer terminates this contract for any reason other than due to the Pole/Zero's material breach, by giving a least thirty (30) day notice in writing to Pole/Zero, the Buyer shall reimburse Pole/Zero 's the amount equal to an agreed upon cancellation charge plus all of Pole/Zero 's cost incurred, up to and including the date of termination, that are related to such contract. Such costs include, but are not limited to, any finished goods, work in process, raw materials manufactured or otherwise procured in furtherance of this contract and any costs related to Pole/Zero's purchase obligations to its subcontractors, if any, that cannot be canceled without a cost to Pole/Zero. Pole/Zero shall mitigate such costs to the extend reasonably practicable.\*

## **SCHEDULE: INTERNATIONAL TERMS AND CONDITIONS OF SALE**

This Schedule: International Terms and Conditions of Sale (these "International Terms") provides additional terms and conditions applicable to the Contract. If any provision in these International Terms is inconsistent with any other provision of the Terms, the provision in these International Terms shall govern.

**1. Language:** In case of controversy or dispute between a translation of the Contract and the English language original, the English original shall control for all purposes.

**2. Shipment and Delivery:** This section replaces section 3 of the Terms in its entirety. Unless otherwise agreed in writing between the parties, any Products shall be delivered DAT to the airport agreed to by the parties that is located in the destination country (Incoterms 2010) (the term "delivered at terminal" or "DAT" as used herein shall be interpreted in accordance with Incoterms 2010).

Title to all Products shall pass to Buyer upon delivery to Buyer at the delivery point. All Products shall be packaged and packed for shipment in accordance with appropriate commercial practices. Claims for shortages and other error in delivery must be made in writing to Pole/Zero within 10 days after delivery and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer.

Pole/Zero reserves the right to make delivery in installments, unless otherwise expressly agreed to in the Contract; 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 Buyer's obligations to accept remaining deliveries.

Pole/Zero shall use reasonable efforts to comply with the delivery date specified herein (if any), but any such date is an estimate only, unless otherwise agreed in writing by the parties.

**3. Governing Law/Arbitration:** This section replaces section 15 of the Terms in its entirety. The Contract shall be governed by and be construed in accordance with the laws of the State of New York, without giving effect to any choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the transactions contemplated by the Contract.

Except as provided in this section, all disputes shall be finally resolved by binding arbitration before 3 arbitrators pursuant to the rules ("Rules") and under the auspices of the International Chamber of Commerce ("ICC"). Such arbitration shall be held in New York, New York, U.S.. In accordance with the Rules, each party shall select 1 arbitrator and the 2 arbitrators so selected shall select the 3rd arbitrator. The arbitrators shall be knowledgeable in the chosen law and the industry. At either party's request, the arbitrators shall give a written opinion stating the factual basis and legal reasoning for their decision. The parties, their representatives, and any other participants shall hold the existence, content, and result of arbitration in confidence. The arbitration proceedings shall be conducted in the English language and all documents and witness depositions, whether written or oral, provided as proof during the arbitration proceedings, if any, shall be presented in English. The arbitration award shall be final and binding upon the parties. The arbitration award shall be rendered in writing and duly substantiated. The responsibility of the parties for the costs of the arbitral procedure, including but not limited to, ICC administrative fees, arbitrators' fees and expenses, fees and expenses of experts appointed by the arbitral tribunal, attorney's and party-appointed experts' fees and expenses, shall be decided by the arbitral tribunal. Either party may, at its sole discretion, seek interim judicial relief in any court of competent jurisdiction (including, but not limited to, interim injunctive relief). The provisions of this section may be enforced by any court of competent jurisdiction.

**4. Anti-Bribery Compliance:** Buyer hereby certifies that Buyer and its directors, officers, employees, agents, sub-contractors and/or consultants:

(i) are familiar with, and shall comply in all respects with, all applicable laws in force from time to time regarding bribery, fraudulent acts, corrupt practices and/or money laundering, including the U.S. Foreign Corrupt Practices Act, as amended, and the U.K. Bribery Act 2010, as amended;

(ii) have not and shall not authorize or make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, in connection with the Contract to any "foreign official," including (a) any official, agent, or employee of any government or governmental agency; (b) any political party or officer, employee or agent thereof; or (c) any holder of public office or candidate for political office; and

(iii) are not officials or employees of any government, an official of a political party, or a candidate for political office, or a director, officer, employee, or affiliate of a government instrumentality.

Buyer understands that for purposes of this section, a "foreign official" may include an employee or official of a commercial entity in which a government body has an ownership interest or exerts control over the activities of such entity, as well as officials and employees of public international organizations.