



## Amended & Restated General Purchase Order Terms & Conditions

As used herein, "Seller" refers to you, the party who desires to provide goods and or services to Zepher, Inc., and includes Seller, its subsidiaries and affiliates. "Zepher" includes Zepher, Inc. and its subsidiaries and affiliates. This constitutes a legally-binding agreement, and sets forth the terms and conditions by which Seller shall provide goods and/or services to Zepher, and by which Zepher may accept or reject, and compensate Seller, for such goods and/or services. **Your performance under any Zepher purchase shall constitute Seller's acceptance of these terms and conditions. These Terms and conditions take precedence over those of any other party.** Seller and Zepher hereby agree as follows:

**1. Goods and Services.** Seller agrees to provide the goods and/or services (the "Goods" and/or the "Services") as described and in accordance with the requirements set forth on the face of the applicable purchase order (the "P.O.") or statement of work ("S.O.W."), any attachments thereto (i.e. drawings) and the terms and conditions described therein and herein. Seller is also required to submit a sample deliverable of the goods to Zepher prior to commencing a production run. In the event that a sample is not specifically required, the initial production run will act as the sample. Subsequent deliveries of goods must conform to the characteristics of the sample deliverable approved by Zepher (i.e. same materials, machining techniques, quality, etc.) in addition to meeting the specifications and other terms and conditions of this Agreement, including but not limited to Section 7 (Inspection and Acceptance). The allocable P.O.(s) and S.O.W.(s) these terms and conditions constitute, and are collectively referred to as the "Agreement".

This Agreement may not be added to, modified, superseded or otherwise altered, except in writing signed by an authorized Zepher representative. Any terms or conditions contained in any acknowledgment, invoice or other communication of Seller which are inconsistent with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made on condition of assent by Seller to the terms of this Agreement, and shipment of the Goods or performance of the Services by Seller shall constitute such assent.

**2. Delivery.** Goods delivered pursuant to the terms of this Agreement shall be carefully packed for shipment in suitable containers to ensure safe and damage-free transportation and marked for shipment by Seller to the shipping destination specified in the applicable P.O. All packages must be accompanied by a packing list detailing the contents including description and quantity of the goods, part number or size, if applicable, revision, appropriate evidence of inspection, and a certificate of conformance. Zepher's P.O. number and line item number must appear on all packing lists and/or bills of lading. Seller shall ship and deliver all Goods to Zepher if international, DDP (Delivered Duty Paid, Inco terms 2000) or if domestic FOB: Destination, Bingen, Washington, USA unless otherwise stated in the P.O. Seller shall strictly adhere to the shipment or delivery schedules specified in this contract. In the event of any anticipated or actual delay, including but not limited to labor disputes, Seller shall: (i) promptly notify Zepher in writing of the reasons for the delay and the actions being taken to overcome or minimize the delay; (ii) provide Zepher with a written recovery schedule; and (iii) if requested by Zepher, ship via air or other expedited routing to avoid or minimize delay the maximum extent possible, unless Seller is excused from prompt performance as provided in the "Force Majeure" clause of this contract. The added premium transportation costs are to be borne by Seller. If any Goods are not shipped within thirty (30) days after the shipping date specified in the applicable purchase order, then Zepher may cancel the applicable P.O. with respect to any such Goods by giving Seller written notice of such cancellation, and any such cancellation shall be without any cost, penalty or liability to Zepher. Seller shall promptly refund any purchase price and other amounts paid by Zepher with respect to the cancelled Goods.

**3. Identification, Risk of Loss & Destruction of Goods.** Title to the Goods and risk of loss shall pass to Zepher at delivery (Bingen, Washington). If the Goods ordered are damaged or destroyed prior to title

passing to Zepher, then Zepher may, at its option exercised in its sole discretion, cancel the P.O or

require delivery of substitute Goods of equal quantity and quality. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, Zepher shall have the right to require delivery of the Goods not destroyed.

**4. Payment.** As full consideration for delivery of the Goods and/or performance of the Services and the assignment of rights to Zepher as provided herein, Zepher shall pay Seller the amount agreed upon and specified in the P.O. Seller's invoice shall separately state all applicable taxes and other charges such as shipping costs, duties, customs, tariffs, imposts and government imposed surcharges. Seller shall consider payment made when Zepher mails its check to Seller. Payment shall not constitute acceptance unless otherwise stated herein. All personal property taxes assessable upon the Goods prior to receipt by Zepher of Goods conforming to the P.O. shall be borne by Seller. Seller shall invoice Zepher for only Goods delivered and Services completed. Unless otherwise specified on the face of the P.O., Zepher will pay the invoiced amount within thirty (30) days after receipt of acceptable invoice or the actual delivery date, whichever is later. Seller will not be entitled to any royalty or other remuneration on the production or distribution of any products developed by Zepher in connection with or based on the Goods.

**5. Representations, Covenants & Warranties.** Seller represents at the time of entering into this Agreement, and covenants at all times during the term of the Agreement, to Zepher and its customers, that its performance hereunder shall not infringe any third party Intellectual Property rights or violate any law or regulation in any applicable jurisdiction. Seller acknowledges and agrees that it is its sole responsibility to be informed of, and compliant with, all such applicable laws and regulations, including but not limited to the International Traffic of Arms Regulation (ITAR) and registering with the US State Department if they are producing parts or maintaining drawings that are ITAR controlled.

Seller warrants that all Goods and Services furnished under this Agreement shall conform to all specifications and requirements of this Agreement (including the applicable P.O.(s)) and shall be free from defects in materials and workmanship for a period of one (1) year. To the extent that Zepher does not furnish complete detailed designs and specification, the Seller shall ensure that all supplemental designs and specifications are free from design and manufacturing defects. Seller warrants that all Goods provided will be new and will not be used or refurbished unless expressly specified on the P.O. Additionally, Goods purchased shall be subject to all written and oral express warranties made by Seller's agents. All warranties and Service guaranties shall not be exclusive remedies, and shall run both to Zepher and to its customers.

If Zepher identifies a warranty problem with the Goods during the applicable warranty period, Zepher will promptly notify Seller of such problems and, at Seller's expense and Zepher's option exercised in its sole discretion, either return the Goods to Seller, repair the Goods or have the Good repaired, in each case at Seller's expense. Within ten (10) business days of receipt of any returned Goods, Seller shall, at Zepher's option and Seller's expense (i) either repair or replace such Goods; (ii) credit Zepher's account for the same; or (iii) obtain replacement Goods from another source. Reshipments shall include paperwork that clearly identifies if the part was reworked or replaced and include Zepher's purchase order number and RMA number if applicable. All costs and expenses and loss of value incurred as a result of or in connection with nonconformance and repair, replacement or other correction may be recovered from Seller by equitable price reduction or credit against any amounts that may be owed to Seller under this Agreement. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer. Each warranty is transferable to Zepher's customers. If Services are to be performed as part of this Agreement, Seller warrants that it is qualified to perform such Services, and warrants all Services in accordance with standards referenced in the Statement of Work which shall accompany any P.O. for Services.

Seller shall perform special processes in accordance with apply NADCAP standards. Seller shall apply the following manufacturing standards for all electrical components produced:

- All ESD sensitive products/services shall be protected in accordance with ANSI/ESD 20/20.
- All electrical/electronic assemblies shall be compliant with IPC-A-610.
- All cables/wire harnesses shall be compliant with IPC-WHMA-A-620 CABLE AND WIRE HARNESS.
- All electrical/electronic assemblies shall comply with AS5553 Fraudulent/Counterfeit Electronic Parts; Avoidance, Detection, Mitigation, and Disposition.

Seller further warrants that it shall not furnish "Counterfeit Goods" under this contract, defined as Goods or separately-identifiable items or components of Goods that: (i) are an unauthorized copy or substitute of an Original Equipment Manufacturer or Original Component Manufacturer (collectively, "OEM") item; (ii) are not traceable to an OEM sufficient to ensure authenticity in OEM design and manufacture; (iii) do not contain proper external or internal materials or components required by the OEM or are not constructed in accordance with OEM design; (iv) have been re-worked, re-marked, re-labeled, repaired, refurbished, or otherwise modified from OEM design but are represented as OEM authentic or as new; or (v) have not passed successfully all OEM-required testing, verification, screening, and quality control processes. Counterfeit Goods shall be deemed nonconforming to this contract and shall be subject to the remedies set forth in this article 5 and all other remedies available at law and in equity.

**6. Quality Management.** Seller shall establish and maintain a quality management system acceptable to Zepher for the Goods purchased under this contract. Seller shall permit Zepher to review its procedures, practices, processes and related documents to determine such acceptability. Seller shall have a continuing obligation to promptly notify Zepher of any violation of or deviation from Seller's approved inspection/quality management system and to advise Zepher of the quantity and specific identity of any Goods delivered to Zepher during the period of any such violation or deviation.

Products produced under this contract require a production plan that includes at a minimum the required materials, tools and instructions needed to perform consistent production. All production should follow the production plan. Seller must notify Zepher of any 'work transfer' and incorporate the changes into their production plan. Examples of work transfer include: transitioning make/buy parts, changing suppliers, changing manufacturing locations. Zepher must be notified of changes to the production environment that could affect manufactured quality, including the relocation or substitution of production equipment.

Seller shall maintain a FOD (foreign object debris/damage) prevention plan adequate to prevent FOD from shipping to Zepher. Zepher maintains the right to inspect this plan in accordance with Section 7.

Seller shall maintain a CM (configuration management) system acceptable to Zepher for goods purchased under this contract. The Seller's CM system must at a minimum keep current and accurate records indicating the manufactured revisions of products produced under this contract. This should include all production documents and their revisions as of the time of manufacture. Zepher maintains the right to inspect this system in accordance with Section 7.

**7. Inspection and Acceptance.** Seller shall maintain an inspection system acceptable to Zepher for the Goods purchased under this Agreement. Zepher, Zepher's customers, and regulatory agencies shall, at no cost, have reasonable access to Seller's, and Seller's subcontractor locations, facilities and records as requested to inspect Seller's facilities, documentation, processes and Goods. Zepher shall have a reasonable time after receipt of Goods and before payment to inspect Goods for conformity with this Agreement and Zepher's specifications and/or drawings (the "Specifications"), and Goods received prior to inspection shall not be deemed accepted ("Acceptance") until Zepher has performed adequate testing to determine whether the Goods conform to this Agreement and the Specifications. Payment or use of a portion of the Goods for the purpose of testing shall not constitute an Acceptance of the Goods. If Goods tendered do not wholly conform to the provisions of this Agreement and the Specifications, then Zepher shall have the right to reject such Goods. Nonconforming Goods will be

returned to Seller, and freight collection and risk of loss will pass to Seller upon Zepher's delivery to the common carrier. Upon Acceptance, title to all Goods, and if Goods are customized for Zepher, documentation, engineering and modifications to Goods, shall transfer to Zepher.

**8. Custom Products.** All work, if any, in customizing Seller's product for Zepher's or its Customer's use ("Work") shall, to the full extent permitted under the United States Copyright Act, be deemed a "Work made for hire," with all copyrights therein vested to Zepher. Other than where Work created hereunder is considered a "Work made for hire," Seller agrees to, and hereby grants, conveys and assigns to Zepher a perpetual, fully-paid-up, and transferable license rights to all copyrights, trade secrets, patents and other intellectual property rights in all such Work, and all originals and copies of such Work shall be provided to Zepher upon Zepher's request or the termination or expiration of this Agreement. The Work shall be the sole and exclusive property of Zepher, and Zepher shall own all rights therein, including without limitation the copyright therein, throughout the world. Seller further agrees to provide Zepher with information and assistance and to execute all such additional instruments and documents as may be required to vest and evidence all such right in Zepher, including, without limitation, any Copyright Assignment Agreements that may be requested. To the extent that Work has a "look and feel" created under this Agreement ("Look and Feel"), Seller represents and warrants that the Look and Feel shall belong to Zepher.

**9. Subcontracting.** Seller shall maintain complete and accurate records regarding all subcontracted items and/or processes. Unless Zepher's prior written authorization is obtained, Seller may not purchase completed or substantially completed products (components of Goods). Unless Zepher's prior written authorization or approval is obtained, Seller may not purchase Services where said Services result in any Intellectual Property commitments or otherwise make use of the Intellectual Property of any third party. For the purposes of this Agreement, completed or substantially completed products shall not include components or subassemblies.

**10. Diminishing Manufacturing Sources & Material Shortages.** Seller shall promptly identify for Zepher, in writing, any obsolete parts, diminishing manufacturing sources or material shortages. Criteria used in evaluating such parts shall include, but not be limited to, availability of the part(s) the life cycle use of the part and available suppliers. Seller shall monitor the parts and materials that have the potential to adversely affect Zepher's supply of such parts production or life cycle supportability. Seller shall provide Zepher with a minimum of thirty (30) days written notice any time a part is identified as an at-risk part or material. Seller's notice shall address part cost, where and how often parts are used in the Goods, and how many parts are likely to be affected. Seller's notice shall also include a recommendation to Zepher stating how the parts will be supported in the future.

**11. Changes.** Zepher may, in its reasonable discretion and in writing, make changes to the general scope of any P.O.(s) in any of the following areas: (i) technical requirements and descriptions, specifications, statement of work, drawings or designs; (ii) shipment or packing methods; (iii) place of delivery, inspection or acceptance; (iv) reasonable adjustments in quantities or delivery schedules or both; (v) amount of Zepher-furnished property; and, if applicable (vi) description of services to be performed; (vii) time of performance (e.g., hours of the day, days of the week); (viii) place of performance, and (ix) terms and conditions required to meet Zepher's obligations under Government prime contracts or subcontracts. Seller shall comply immediately with such changes. However, if and only to the extent that such change increases or decreases the cost or time required to perform this contract, Zepher and Seller shall make an equitable adjustment in the price or schedule, or both, to reflect the increase or decrease. Zepher shall modify the applicable P.O.(s) in writing accordingly. Seller must assert any claim for adjustment to Zepher's authorized procurement representative in writing within ten (10) days and deliver a fully supported proposal to same within thirty (30) days after Seller's receipt of such changes. Zepher may, at its sole discretion, consider any claim regardless of when asserted. If Seller's proposal includes the cost of property made obsolete or excess by the change, Zepher may direct the disposition of the property. Zepher may examine Seller's pertinent

books and records to verify the amount of Seller's claim. Failure of the parties to agree upon any adjustment shall not excuse Seller from performing in accordance with Zepher's direction.

**12. Insurance.** Seller shall be solely responsible for maintaining such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, product insurance, and other insurance, as is required by law or as is the common practice in Seller's businesses, whichever affords greater coverage. Without limiting the foregoing, Seller shall, at minimum, maintain the following coverages at all times during its performance under this Agreement:

- General Liability: \$1M per occurrence; \$3MM in the aggregate
- Errors & Omissions: \$1M per occurrence; \$3MM in the aggregate

Upon request, Seller shall provide Zepher with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any Zepher property under the care, custody or control of Seller.

**13. Indemnity.** Seller shall indemnify, hold harmless, and at Zepher's request, defend Zepher, its officers, directors, customers, agents and employees, against all claims, liabilities, damages, losses and expenses, including attorneys' fees and cost of suit arising out of or in any way connected with the performance or non-performance of Seller under this Agreement. Seller shall not settle any such suit or claim without Zepher's prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by Zepher in enforcing this indemnity, including attorneys' fees.

**14. Confidentiality / Export.** Zepher and Seller shall each keep confidential and protect from unauthorized use and disclosure all (a) confidential, proprietary and/or trade secret information which is identified as such or which the recipient knows or reasonably should know is of a confidential or proprietary nature; (b) tangible items and software containing, conveying or embodying such information; and (c) tooling identified as being subject to this article and obtained, directly or indirectly, from the other in connection with this contract or other agreement referencing this contract (collectively referred to as "Proprietary Information and Materials"). Proprietary Information and Materials shall include information of third parties including Zepher customers and suppliers which is made available to Seller. Zepher and Seller shall each use Proprietary Information and Materials of the other only in the performance of and for the purpose of this Agreement and/or any other agreement referencing this Agreement. This Section 14 shall not, however, prevent Zepher from using, disclosing and reproducing Seller's Proprietary Information and Materials, and any other materials provided by the Seller, and making derivative works thereof, for the purposes of testing, certification, use, sale or support of any Goods delivered or Services performed under this Agreement. Any such use, disclosure, reproduction or derivative work by Zepher shall, whenever appropriate, include a restrictive legend suitable for the particular circumstances. The restrictions on disclosure or use of Proprietary Information and Materials by Seller shall apply to all materials derived by Seller or others from Zepher's or its customer's or supplier's Proprietary Information and Materials. Upon Zepher's request at any time, and in any event upon the completion, termination or cancellation of this contract, Seller shall return to Zepher all Proprietary Information and Materials and all materials derived therefrom provided to Seller by Zepher, unless specifically directed otherwise in writing by Zepher. Seller shall not, without the prior written authorization of Zepher, sell or otherwise dispose of (as scrap or otherwise) any parts or other materials containing, conveying, embodying or made in accordance with or by reference to any Proprietary Information and Materials of Zepher. Prior to disposing of such parts or other materials as scrap, Seller shall render them unusable. Zepher shall have the right to audit Seller's compliance with this article. Seller may disclose Proprietary Information and Materials of Zepher to its approved subcontractors as required for the performance of this Agreement, provided that each such subcontractor first agrees in writing to the same obligations imposed upon Seller under this article relating to Proprietary Information and Material. Seller shall be liable to Zepher for any breach of such obligation by any such subcontractor or other third party. The provisions of this article are effective in lieu of any restrictive legends or notices applied to Proprietary Information and Materials. The provisions of this article shall survive the performance, completion, termination or cancellation of this Agreement. Seller acknowledges that the Proprietary Information and any other

information transferred to Seller is subject to export controls of the US Government, and agrees not to transfer, export or re-export such information without the written permission of the US Government and Zepher. Transfer, export, or re-export for which US Government and Zepher permission is required includes, but is not limited to, transfer to foreign nationals. Zepher shall reasonably assist Seller in securing the permission described in this paragraph.

**15. Termination.** Zepher may terminate any P.O. or S.O.W., or this Agreement in its entirety, upon written notice to Seller at any time and for any reason. Upon receipt of cancellation notice or stop work order, seller shall cease to make any additional commitments or expend any additional resources in performance of this contract.

In the event of a termination for Zepher's convenience or any reason other than the breach of the agreement by the seller, Zepher shall pay Seller for all reasonable expenses and non-cancelable/returnable obligations, including associated profits and overheads. Supplier is responsible for submitting an estimated cancellation cost within two weeks of notice of cancellation. Supplier is responsible for submitting a detailed substantiation of cancellation costs within four (4) weeks of notice of cancellation. Zepher will also pay reasonable close out costs and report preparation costs.

If any P.O., S.O.W., or the entire agreement is terminated due to Seller's failures to deliver Goods in the manner and within the time specified by this Agreement or any applicable P.O. or S.O.W. or Seller's failures to perform any other provisions of this Agreement or fails to make progress so as to endanger acceptable performance and does not correct the failure within ten (10) days after receipt of notice from Zepher, or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves, then Zepher shall have no further payment obligation or liability to the Seller.

Seller may terminate this Agreement upon written notice to Zepher if Zepher fails to pay Seller within sixty (60) days after Seller notifies Zepher in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their terms survive such termination or expiration; and (b) Seller will promptly notify Zepher of all Proprietary Information in Seller's possession and, at the expense of Seller and in accordance with Zepher's instructions, will promptly deliver to Zepher all such Proprietary Information.

**16. Remedies.** If Seller breaches this Agreement, Zepher shall have all remedies available at law and in equity. For the purchase of Goods, Seller's sole remedy in the event of breach of this Agreement by Zepher shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for Zepher's account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by Zepher and any resale so made shall be for the account of Seller.

**17. Disputes.** The parties agree to make every reasonable effort to resolve disputes through communication amongst the parties. The following steps shall be taken to resolve any disputes: (1) oral communication between the parties; then (2) the aggrieved party shall notify the other party in writing as to the dispute with thirty (30) days to resolve; if not resolved then (3) either party may seek redress in any court of competent jurisdiction. Pending final resolution of any dispute, Seller shall proceed with performance of this contract according to Zepher's instructions so long as Zepher continues to pay amounts not in dispute.

**18. Zepher's Property.** As used in this Section 18, "property" shall mean all property including but not limited to documents, drawings, materials, work in progress (WIP), and finished goods to which Zepher provides Seller or Zepher acquires an interest by virtue of this Agreement or any P.O. Seller shall clearly identify with markings, maintain an inventory of, take reasonable measures to prevent theft and

vandalism of, and keep segregated from other property all of Zepher's property. As directed by Zepher, upon completion, termination or cancellation of this Agreement or any P.O., Seller shall deliver such property, to the extent not incorporated in delivered Goods, to Zepher in good condition subject to ordinary wear and tear and normal manufacturing losses. Seller assumes all risk of loss, destruction or damage of such property while in Seller's possession, custody or control, including any transfer to Seller's subcontractors. Seller shall notify Zepher's authorized procurement representative if any Zepher property is lost, damaged, stolen or destroyed.

**19. Records and Audit.** Seller shall retain complete and accurate records pertaining to the Goods and Services for a period of no less than three (3) years dating back to the commencement of work for Zepher and shall include without limitation, price lists, invoices, certificates of conformance, quality, and inspection reports, and inventory records with five (5) days written notice. Zepher will make reasonable efforts to conduct such audit with minimal disruption to Seller's operations.

**20. Force Majeure.** Neither party shall be liable for any failure to perform, including Zepher's failure to take delivery of the Goods as provided, caused by circumstances beyond that party's reasonable control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of terrorism, acts of war, government action.

**21. Severability.** If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**22. LIMITATION OF LIABILITY.** With the exception of section 14 (Confidentiality), in no event shall Zepher be liable to Seller or any third party for any incidental, indirect, loss of profits, special or consequential damages arising out of, or in connection with, this agreement, whether or not Zepher was advised of the possibility of such damage. In any event, Seller agrees that its damages and Zepher's liability hereunder shall in no case exceed the total amount paid or payable by Zepher to Seller during the year preceding the event or action giving rise to the claim. Any claim made by Seller in connection with this Agreement shall be made within one (1) year from the date on which the Seller first had notice of the facts giving rise to the claim.

**23. Assignment; Waiver.** Seller may not assign, whether by operation of law pursuant to merger or acquisition or otherwise, this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of Zepher. Any assignment or transfer without such written consent shall be null and void. Notwithstanding the foregoing, this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. A waiver of, or any default hereunder of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

**24. Nonexclusive Agreement.** This is not an exclusive agreement. Zepher is free to engage others to provide Goods or Services the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer and provide Seller's standard Goods to others; provided however, that Seller does not breach any term or condition of this Agreement.

**25. Utilization of Small Business Concerns.** Seller agrees to actively seek out and provide the maximum practicable opportunities for small businesses, small disadvantaged businesses, women-owned small businesses, minority business enterprises, historically black colleges and universities and minority institutions, Historically Underutilized Business Zone small business concerns and U.S. Veteran and Service-Disabled Veteran Owned small business concerns to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this contract.

**26. Notices.** Except for P.O.s which may be sent by local mail, facsimile transmission, or email attachment, all notices, and other communications hereunder shall be in writing, and shall be

addressed to Seller or to an authorized Zepher representative, and shall be considered given when (a) delivered personally, (b) sent by email or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) ten (10) days after having been sent, postage prepaid, by first class or certified mail.

**27. Survival of Obligations.** Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement, including but not limited to Confidentiality and Export.

**28. Governing Law; Venue.** This Agreement shall be governed and construed in all respects in accordance with the domestic laws and regulations of the State of Washington, without regard to its conflicts of laws principles to the contrary. The parties specifically agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Seller agrees that venue for any dispute shall be proper in Klickitat County, WA, and hereby agrees to submit to personal jurisdiction there.

**29. Entire Agreement; Modification.** This Agreement is the complete, final and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter of this Agreement. This Agreement may not be varied, modified, altered, or amended except in writing, including a P.O. or a change order issued by Zepher, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller.

**30. Compliance with Laws.** Seller shall comply fully with all applicable federal, state and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control and environmental laws. If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling and transportation of such hazardous materials. Upon Zepher's request, Seller will promptly provide Zepher with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.

**31. Compliance with Government Flow-down Clauses (FARs and DFARs).** Seller shall comply fully with all pertinent Government FAR and DFAR clauses applicable with this purchase. These include, but are not limited to the following: 52.225-13 Restrictions on Certain Foreign Purchases, 52.244-6 Subcontracts for Commercial Items, DFARS 252.225-7014 Preference for Domestic Specialty Metals, Alternate I. For a full list of flow-down clauses refer to Zepher's website [www.zepherinc.com](http://www.zepherinc.com). While Zepher will make reasonable efforts to notify Seller of changes, Seller acknowledges and agrees that it is their sole responsibility to monitor this site for changes and maintain compliance with FAR/DFAR regulations.

**32. Offset Credit** To the exclusion of all others, Zepher or its assignees shall be entitled to all industrial benefits or *offset* credits which might result from this contract. Seller shall provide documentation or information that Zepher or its assignees may reasonably request to substantiate claims for industrial benefits or offset credits.

Seller agrees to use reasonable efforts to identify the foreign content of goods that Seller either produces itself or procures from subcontractors for work directly related to this contract. Promptly after selection of a non-U.S. subcontractor for work under this contract, Seller shall notify Zepher of the name, address, subcontract point of contact, (including telephone number and email address) and dollar value of the subcontract.

**33. Reciprocal Waiver of Claims – Qualified Anti-Terrorism Technology** This agreement involves manufacture, sale, use, or operation of qualified anti-terrorism technologies. You are a contractor,

subcontractor, supplier, vendor, customer, or contractor and subcontractor of a customer of such technologies. As such, pursuant to 6 U.S.C. §443(b) of the SAFETY Act and 6 C.F.R. §25.5(e), you shall be responsible for losses, including business interruption losses, that you sustain (and for losses that your employees sustain) resulting from an activity resulting from an act of terrorism when the qualified anti-terrorism technologies have been deployed in defense against or response to or recovery from such act of terrorism.

Qualified anti-terrorism technology," "act of terrorism," and "loss" are defined in 6 U.S.C. §444.

Include the substance of this clause, including this paragraph (c), in all Contracts, purchase orders (PO), or Subcontracts or PO's with a contractor, subcontractor, supplier, vendor, customer, or contractor and subcontractor of a customer. In accordance with FAR 50.205-1 (Safety Act Considerations 2007), the U.S. Government is not a "customer" from which a contractor must request a reciprocal waiver of claims.

**34. PUBLICITY** Seller shall implement the intent of this paragraph in its business operations and at all of its sub-tier Suppliers as follows: (i) Seller shall not use Zepher's brand(s) or that of its customers (text or visual use of products, services, company name, logo, programs, etc.), of any kind through any outbound channel, including, but not limited to: press releases, advertising, media articles, websites, presentations, video, still photos and tradeshow graphic panels & promotional items or denial or confirmation of same regarding this purchase order (PO) contract or the Goods or program to which it pertains, without Zepher's written permission. (ii) Seller shall require that its subcontractors, at all tier levels, not release any publicity, advertisement, news release or denial or confirmation of same regarding this contract or the Goods or program to which it pertains. Information released includes, but is not limited to: press releases, advertising, media articles, websites, presentations, video, still photos and tradeshow graphic panels & promotional items, etc. (iii) Seller shall be liable to Zepher for any breach of such obligation by subcontractor and its sub-tier Suppliers. Zepher may, at its option, recover damages caused by release of unauthorized information as discussed in this section including all legal fees and costs. (iv) By accepting any P.O. award, Seller explicitly agrees that dissemination of unauthorized publicity is strictly prohibited unless approved prior to any release, in writing, by an authorized representative of Zepher.

**35. SUPPLIER MONITORING** Suppliers will be monitored with goal of 100% on time delivery and 100% conformance assuming all quoting analysis on supplier side should be accurate to supplier capabilities and capacity for quoted projects.