



Terms & Conditions of Sale

These Terms & Conditions of Sale (these “**Terms**”), together with the order form to which they are attached or otherwise incorporated into by reference (the “**Order**”), and all attachments, exhibits, or schedules thereto (the Terms, Order, and such attachments, exhibits, or schedules, collectively, this “**Agreement**”), govern the sale of the goods (“**Products**”) or services (“**Services**”) set forth in the Order. Each of HZO, Inc. (“**Seller**”) and the buyer identified in the Order (“**Buyer**”), or Buyer’s subsidiaries or affiliates, as applicable, agree to be bound by the terms and conditions of this Agreement. Any terms proposed by Buyer, which add to, vary from, or conflict with the terms of this Agreement shall be void, and the terms of this Agreement shall govern. If a quote or invoice has been issued by Seller in response to an offer, the terms of which are additional to or different from any of the provisions hereof, then the issuance of such quote or invoice by Seller shall constitute an acceptance of such offer subject to the express condition that Buyer assents that this Agreement constitutes the entire agreement between Buyer and Seller with respect to the subject matter hereof and the subject of such offer. No amendments, modifications, substitutions, or supplements to this Agreement shall be binding unless in writing and signed by Seller’s designated representative.

1. **Prices.** Prices for Products and Services shall be as set forth in the Order. All prices exclude sales, use, license excise, and other taxes in respect of manufacture, sale or delivery, export or import duties, all of which shall be paid by Buyer unless a proper exemption certificate is furnished. Prices exclude shipping and handling, which shall be paid by Buyer.
2. **Terms.** Unless otherwise specified in the Order, and subject to credit approval, the terms of payment are net thirty (30) days from the date of invoice. Invoices not paid shall be subject to a service charge of one percent (1.0%) per month on the past-due amount. Notwithstanding the foregoing, in the event Buyer does not pay all amounts due within such thirty (30)-day period, Seller may withhold further shipments until acceptable payment is made. Shipment holds shall not constitute Seller’s breach and Seller, in its sole discretion, may continue to perform in accordance with Buyer’s purchase orders.
3. **Order Acceptance.** No order by Buyer is binding on Seller unless the applicable Order is signed by Seller or Seller accepts such order by shipping the Products. Seller may at any time, without notice, change or suspend credit terms, stop shipment or cancel unfilled purchase orders when, in Seller’s sole discretion, the financial condition of Buyer or its account so warrants, or when delivery is delayed through any fault of Buyer, or when Buyer is delinquent on any payment for invoiced Products or services.
4. **Delivery; Delays.** Unless otherwise specified, delivery will be Ex-Works (Incoterms 2020) Seller’s place of manufacture, and Buyer assumes all responsibility for risk of loss, or damage to, the Products furnished hereunder upon delivery of the Products to the common carrier. Products shall be deemed accepted by Buyer upon Buyer’s receipt thereof. Seller shall have the right to select the means of transportation. Delivery dates quoted by Seller are approximate and subject to confirmation. Delay in delivery by Seller for any shipment shall not relieve Buyer of its obligation to accept remaining installment deliveries. Buyer must make claims for shortages or other errors in delivery in writing to Seller within thirty (30) days after Buyer’s receipt of shipment and failure to give such written notice shall constitute unqualified acceptance and a waiver of all such claims. Seller shall not be responsible for delays in delivery. If shipping is delayed or interrupted by Buyer directly or indirectly, Buyer shall pay Seller all additional charges resulting there from. Moreover, if as a result of such delay or interruption the Products are not shipped within five (5) days after notification has been made to Buyer that it is ready for shipping, Seller may store the Products at Buyer’s risk in a warehouse or upon Seller’s premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefore.
5. **Cancellation.** Accepted Orders cannot be cancelled or rescheduled by Buyer.
6. **Services.** Seller shall use commercially reasonable efforts to provide the Services, if any, selected by Buyer as indicated in the Order.
7. **Intellectual Property.** Title to and ownership of the intellectual property rights embodied in the Products shall at all times remain the property of Seller or its licensors. Products may include software (“**Software**”). Seller reserves all rights not expressly granted in this Agreement, and no licenses are granted by Seller under this Agreement, whether by implication, estoppel or otherwise.
8. **Warranty.**
 - (a) **Product Warranty.** Seller warrants that, except as otherwise set forth in an applicable Order, all Products shall, for a period of one (1) year following the date such Product is shipped to Buyer, comply in all material respects with any specifications agreed upon in writing by Buyer and Seller.
 - (b) **Exclusions.** The warranties set forth in this [Section 8](#) shall not apply to the extent that a Product: (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling or use contrary to any instructions issued by Seller; (ii) has been repaired, altered, disassembled or reassembled; (iii) has not been operated, repaired, and maintained in accordance with the documentation therefor; (iv) has failed due to an act of God, including but not limited to fire, flood, tornado, earthquake, hurricane, lightning, threat of or actual acts of terrorism or war, or other events beyond Seller’s reasonable control; or (v) has been used with any third-party good not provided under this or any other agreement with Seller.
 - (c) **Remedies.** If during such one (1)-year warranty period for a Product: (i) Seller is notified promptly in writing upon discovery of any failure of such Product to conform to the warranty set forth in [Section 8\(a\)](#); (ii) such Product is returned, transportation charges prepaid, to Seller’s designated facility in accordance with Seller’s then-current return procedures, as set forth by Seller from time to time; and (iii) Seller’s inspections and tests determine that such Product indeed fails to conform to the warranty set forth in [Section 8\(a\)](#) and has not been subjected to any of the conditions set forth in [Section 8\(b\)](#), then, as Buyer’s sole remedy and Seller’s sole obligation under the foregoing warranty, Seller will, at Seller’s option, repair or replace such Product without charge. Any Product that has either been repaired or replaced under this [Section 8\(c\)](#) shall have warranty coverage for the longer of thirty (30) days or the remainder of the original one (1)-year warranty period.
- (d) **Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH HEREIN, SELLER MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO ANY PRODUCTS OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE, OR TRADE.
9. **Limitation of Liability.** IN NO EVENT SHALL SELLER OR ITS VENDORS OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, OR AGENTS, BE LIABLE FOR ANTICIPATED OR ACTUAL LOST PROFITS, FOR DAMAGES ON ACCOUNT OF NEGLIGENCE, OR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN NO EVENT SHALL SELLER’S TOTAL AND CUMULATIVE LIABILITY ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EXCEED THE AMOUNT RECEIVED BY SELLER FROM BUYER UNDER THE APPLICABLE ORDER. THE LIMITATIONS SET FORTH IN THIS [SECTION 89](#) SHALL APPLY EVEN IF SELLER OR ITS VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
10. **Title; Remedies.** If Buyer fails to fulfill the terms of payment, Seller may defer further shipments or may, at its option, cancel any unshipped Order. Seller reserves the right, previous to making any shipments, to require from Buyer satisfactory security for performance of Buyer’s obligations.
11. **Choice of Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, excluding that body of law known as choice of law, and shall be binding upon the parties hereto in the United States and worldwide. All disputes with respect to this Agreement shall be brought and heard either in the North Carolina state courts located in Wake County, North Carolina, or the federal district court for the Eastern District of North Carolina located in Raleigh, North Carolina. The parties to this Agreement each consent to the in personam jurisdiction and venue of such courts.
12. **Assignment.** Buyer shall not assign or transfer this Agreement or any rights or obligations under this Agreement, whether voluntary, by operation of law or otherwise, without the prior written consent of Seller; provided, however, that no consent shall be required for any assignment in connection with any merger, acquisition or the sale of all or substantially all of the stock or assets of Buyer to a party that: (a) agrees in writing to be bound by the terms and conditions of this Agreement; and (b) is not, in Seller’s reasonable judgment, a competitor of Seller. Seller may assign or transfer this Agreement to any successor by way of merger, acquisition or sale of all or substantially all of its stock or assets relating to this Agreement. Any assignment or transfer of this Agreement made in contravention of the terms hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on and inure to the benefit of the parties’ respective successors and permitted assigns.
13. **General.** The failure of Seller to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this contract or to exercise any right hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition or the future exercise of such rights. This Agreement and any purchase orders accepted by Seller constitute the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof and supersede all proposals, oral or written, and all other communications between the parties relating to the subject matter herein.