PURCHASE ORDER TERMS AND CONDITIONS

1. **General**. As used in these Purchase Order Terms and Conditions, “Order” shall mean this Purchase Order and all of its attachments and exhibits, including but not limited to these Purchase Order Terms and Conditions and any scope of work, plans, specifications or other documents listed therein. “Zayo” shall mean Zayo Group, LLC, its subsidiaries and affiliates. “Seller” shall mean the person, proprietor, partnership, Limited Liability Company, firm, corporation or other entity to which this Order is issued.
2. **Services and Goods**. Seller agrees to perform the services (“Services”) and/or provide the goods or service deliverables (collectively, “Goods”), described in this Order. Upon acceptance of an Order, shipment of Goods, or commencement of Services, Seller shall be bound by the provisions of this Order, whether or not Seller acknowledges or otherwise signs this Order. Zayo reserves the right to reschedule any delivery or cancel this Order at any time prior to the actual shipment of the Goods or prior to commencement of any Services. Zayo shall not be subject to or liable for any charges or other fees as a result of such cancellation. Zayo shall also have the right to make changes, issue additional instructions or require additional Goods or Services under this Order.
3. **Delivery**. Delivery of Goods and provision of Services shall be completed pursuant to the schedule, via the carrier and to the place specified in this Order, as applicable. To the extent that the parties have not agreed upon a delivery schedule, then time is of the essence in such delivery. Zayo reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, Vendor shall contact Zayo for Zayo’s release notification before shipping. If no method of shipment is specified in this Order, Seller shall use the least expensive, reputable carrier. In the event Seller fails to deliver the Goods or complete the Services within the time specified in this Order, Zayo may, at its option, terminate the Services and terminate this Order or, in the case of Goods, decline to accept the goods or demand its allocable fair share of Seller’s available Goods, and terminate this Order. Zayo shall not be liable for any cancellation fees or termination liability in the event of any such cancellation or termination.
4. **Packaging and Labeling**. Seller shall package all items in suitable containers to permit safe transportation and handling. Each delivered container shall be labeled and marked to identify content without opening and all boxes and packages must contain packing sheets listing contents. Zayo’s Order number must appear on all invoices, shipping containers, packing sheets, delivery tickets and bills of lading. Vendor shall label all packages and/or containers with a label that lists the Zayo Site Name, the number of packages (i.e. Package number 1 of 2, 2 of 2), the applicable Order number and the Zayo site contact name and phone number.
5. **Risk of Loss & Destruction of Goods**. Seller assumes all risk of loss until receipt by Zayo. Title to the Goods shall pass to Zayo upon delivery of Goods to the designated destination and signature of the receiver by an authorized representative of Zayo. If the Goods are damaged or destroyed prior to title passing to Zayo, Zayo may, at its option, cancel this Order, 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, Zayo shall have the right to require delivery of the Goods not damaged or destroyed.
6. **Payment**. The price applicable to Goods and Services delivered by Seller to Zayo shall be the price specified in this Order. Applicable taxes and other charges such as shipping costs, insurance, duties, customs, tariffs, imposts and other government surcharges shall be stated separately on Seller’s invoice. Payment of the purchase price shall be due thirty (30) days after receipt by Zayo of a proper invoice. A “proper invoice” shall mean an invoice which is delivered to the address set forth below and contains sufficient information to allow Zayo to audit the invoice, which information shall include Zayo’s Order number(s) and any relevant backup for the charges invoiced (e.g. receipts, subcontractor invoices). The address for Seller invoices shall be as set forth on the Order and shall be delivered to the attention of Zayo ACCOUNTS PAYABLE DEPARTMENT. Zayo shall have the right to dispute amounts invoiced by Seller and shall provide detailed information regarding any such disputed amounts to the Seller. Any amount disputed in good faith and in writing prior to the date payment is due shall not be due and payable until such dispute is resolved. The parties will cooperate in good faith to resolve any such disputes within sixty (60) days after the dispute is submitted. During the performance of any Services hereunder and for a period of two (2) years after the completion of any Services or the delivery of any Goods, Seller agrees to allow Zayo and Zayo’s accountants and/or consultants access, upon reasonable notice, to Seller’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Services and/or Goods, all of which Seller shall preserve for a period of two (2) years after the completion of any Services or the delivery of any Goods hereunder.
7. **Warranties**. With respect to Services, Seller represents and warrants that all Services shall be completed in a professional, workmanlike manner, will at all times put forth its best efforts on behalf of Zayo in the performance of the Services, will supervise and direct the Services using Seller’s best skill and attention, with at least the degree of skill and care that is required by current, good and sound professional procedures. Further, Seller represents and warrants that the Services shall be completed in strict accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated by this Order. Seller agrees that a failure to prosecute the services as specified and warranted resulting in Zayo network downtime may result in a reduction of the price payable or a refund of amounts paid commensurate with the damages (whether ordinary, direct, indirect, incidental, special, consequential or exemplary) and losses suffered by Zayo for such downtime. With respect to Goods, Seller warrants that all Goods provided will be new and will not be used or refurbished, unless otherwise specified in the Order. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of one (1) year from the date of delivery to Zayo, or for the period provided in Seller’s standard warranty (or the original manufacturer’s standard warranty, if Seller is not the manufacturer) covering the Goods, whichever is longer. Seller hereby agrees that it will make spare parts available to Zayo for a period of five (5) years from the date of shipment at Seller’s then current price, less applicable discounts. Additionally, all Goods purchased shall be subject to all written and oral express warranties made by Seller’s agents, and to all warranties provided for by the Uniform Commercial Code as adopted in Colorado All warranties shall be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish to Zayo Seller’s standard warranty and service guaranty applicable to all Goods. If Zayo identifies a problem with the Goods during the warranty period, Zayo will promptly notify Seller of such problems and will return the Goods to Seller, at Seller’s expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at Zayo’s option, either repair or replace such Goods, credit Zayo’s account, or provide a refund to Zayo for the purchase price of the Goods. Replacement and repaired Goods shall be warranted for the remainder of the warranty period or six (6) months, whichever is longer.
8. **Inspection and Testing**. Zayo shall have a reasonable time after receipt of Goods and/or Services and before payment to inspect them for conformity hereto. No Goods or Services shall be deemed accepted until Zayo has run an adequate test to determine whether they conform to the specifications hereof. Use of a portion of the Goods and/or Services for the purpose of testing shall not constitute acceptance. If Goods and/or Services tendered do not wholly conform with the provisions hereof, Zayo shall have the right to reject the Goods and/or Services. Nonconforming Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon Zayo’s delivery to the common carrier.
9. **Termination for Convenience**. With respect to any Services provided by Seller pursuant to any Order, Zayo shall have the right to terminate such Services at any time, for any reason or for no reason, and Zayo shall only be liable to pay for Services rendered through the date of termination, and shall have no further liability to Seller for any such termination.
10. **Insurance and Indemnity**. Seller shall secure and maintain such insurance as will adequately protect it from claims under any workers' compensation acts or laws of similar import and from all claims which may arise in the course of the performance of its obligations under this Order. Upon Zayo's request, Seller shall furnish Zayo verification of such insurance coverage. Seller agrees to protect, defend, indemnify and hold Zayo, its subsidiaries, affiliates and the members, directors, officers, employees and consultants of each of them free and harmless from and against any and all claims, liabilities, demands, and causes of action of every kind and character arising in favor of third parties on account of personal injuries, death, or loss or damage to property arising out of Seller's supply of Goods and/or Services hereunder. Seller shall indemnify, defend and hold Zayo, its subsidiaries, affiliates and the members, officers, directors, employees and consultants of each of them harmless against any liability, claim, loss, damage, fine, penalty, tax, or expense (including, without limitation, expenses of investigation and attorneys' fees) which may arise out of Seller's failure or the failure of its employees to comply with this Order. Seller shall indemnify, defend and hold Zayo harmless against any claims, liabilities, damages and/or costs of any copyright, patent, trademark or any other intellectual property infringement resulting from or in connection with the manufacture, sale, use or other normal disposition of any Goods furnished hereunder, or the performance, provision or use of any Services hereunder. Notwithstanding Seller’s defense of any such claim or suit, Zayo shall have the right to participate in any defense without relieving Seller of its obligations hereunder.
11. **Liens**. Seller shall at all times promptly pay for all services, materials, equipment, and labor used or furnished by Seller under this Order and shall keep the premises and all property belonging to Zayo (or any landlord, if applicable) free and clear of any and all liens and rights of lien arising out of services, labor, equipment, or materials furnished by Seller or it's employees, material men, or subcontractors. Within three (3) days of receiving written notice from Zayo that such a claim has been filed, Seller shall take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Seller fails to do so, Zayo will have the right to discharge the claim or lien and hold Seller liable for costs and expenses incurred, including attorneys' fees.
12. **Compliance with Laws**. Seller agrees to comply with all applicable federal, state and local laws and regulations.
13. **LIMITATION OF LIABILITY. IN NO EVENT SHALL ZAYO BE LIABLE TO SELLER OR SELLER’S EMPLOYEES, AGENTS OR SUBCONTRACTORS OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT ZAYO WAS ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGE.**
14. **Independent Contractor**. The relationship between Zayo and Seller shall be only that of an “Independent Contractor.” The detailed manner and method of performing the Services or providing the Goods are under the sole control of Seller, Zayo being interested only in the results obtained. Nothing in this Order shall be deemed to make Seller an employee, licensee, partner or agent of Zayo, and Seller shall not hold itself out as such.
15. **Assignment; Waiver**. Seller may not assign this Order or any of its rights or obligations hereunder, without the express written consent of Zayo. Any assignment or transfer by Seller shall be null and void. This Order shall inure to the benefit of, and be binding upon, the successors and assigns of Zayo without restriction. A waiver of any default hereunder or of any term or condition of this Order shall not be deemed to be a continuing waiver or a waiver of any other default, term or condition.
16. **Confidentiality**. Any written information, drawings or data disclosed by Zayo to Seller as well as the results of the Services performed by Seller or Goods provided by Seller for Zayo and all information becoming known to Seller concerning Zayo’s inventions, discoveries, improvements, methods, business plans, customers, ventures, practices, enterprises, exploration, production, transmission, or operation, or any other information concerning the business of Zayo shall be deemed to be confidential and proprietary information of Zayo, and shall be protected by Seller in the same manner and with the same degree of care the Seller treats its own confidential or proprietary information during the term of and after the termination of this Order. Seller shall promptly upon completion of the Services, or on demand by Zayo, return all such information and reproductions therefrom to Zayo. Such proprietary or confidential information shall not be disclosed to any third person or entity without the prior written consent of ZAYO. Confidential or proprietary information shall be treated in the manner specified above until such time as: such information is otherwise available in the public domain, such information shall be established to have been lawfully known by Seller prior to receipt of such information from Zayo or becomes known by Seller through a third party not subject to non-disclosure requirements, or such information is required to be released by a valid law, regulation or court order, and sufficient notice is given by Seller to Zayo of any such requirement or request to permit Zayo to seek an appropriate protective order or exemption from such requirement or request. Seller shall ensure its employees and subcontractors, if any, observe the maintenance of confidentiality and restriction on use set forth herein.
17. **Governing Law.** This Order shall be governed by and construed in accordance with the laws of the Province of Ontario, without regard to its choice of law principles.
18. **Attorneys Fees.** If any action by Zayo is necessary to enforce the terms of this Order or to collect any money due hereunder or to collect any money damages for breach, Zayo shall be entitled to recover, in addition to any other remedy, the reimbursement of attorneys’ fees, courts costs, costs of investigation and other related expenses incurred by Zayo in connection therewith.
19. **Entire Agreement; Amendments.** This Order constitutes the entire agreement between the parties and supersedes all prior understandings, agreements, arrangements and representations among the parties, written or oral, to the extent they relate in any way to the subject matter of this Order. This Order may not be added to, modified, superseded or otherwise altered, except by a writing signed by an authorized Zayo representative. Any terms or conditions contained in any quote, acknowledgement, invoice or other communications from Seller are hereby rejected and Zayo’s acceptance of any goods, paying for any shipment or any other act of Zayo shall not be considered acceptance of any such terms and conditions.