

# Purchase Order Standard Terms and Conditions

## **Scope of Terms and Conditions:**

All contracts entered into by XLR8 Services Inc. (XLR8) as purchaser shall be subject to the then-current XLR8 Terms and Conditions, unless expressly otherwise agreed in writing. Any and all terms and conditions of the Seller are hereby rejected and shall not be deemed to be a part of any contract between XLR8 and the supplier, even if XLR8 fails to expressly contradict such conditions.

All future transactions with the Seller shall likewise be subject to XLR8's Terms and Conditions. No order issued by XLR8 shall be legally binding unless confirmed in writing.

Unless expressly otherwise agreed in writing, failure on the part of XLR8 to respond or agree to modifications, demands or documents submitted by the Seller, shall on no account be deemed to constitute consent.

## **Pricing:**

The prices on this order are fixed and cannot be increased without prior written consent from the authorized Buyer for XLR8.

## **Schedules/Deliveries:**

Sellers promised delivery schedule shown represents Seller's contractual obligation. Should the schedule deviate from the XLR8 required delivery shown the Seller will immediately contact XLR8 for further instructions (i.e., authorization to initiate expedited shipping, etc.) and will use its best efforts to meet the XLR8 required delivery schedule. If shipment is made earlier than specified on the order, XLR8 reserves the right to refuse delivery or return the shipment.

## **Shipping:**

Containers must be properly packed as stated in suggested guidelines of the shipper.

XLR8 purchase order number MUST appear on the outside of all packages.

A packing list AND Certificate of Compliance must accompany each shipment.

Delay in providing these documents will result in delay of payment.

Seller must ship and bill per the address shown on the purchase order, unless otherwise specified.

## **Warranties:**

Seller warrants that the goods sold are merchantable, are free from defects in materials and workmanship, and are fit for their intended use. Nothing herein shall constitute a waiver of any warranties accorded to XLR8 by law (statutory or otherwise), including, without limitation the implied warranties of merchantability fitness and infringement.

## **Product Liability and Insurance:**

If product liability, infringement or any other product-related claims are brought against XLR8 resulting from goods purchased from Seller, Seller shall fully indemnify for all related costs and fees, including but not limited to legal fees. To the extent that the Seller is responsible, Seller shall reimburse XLR8 according to the proportion of its contributory negligence for the costs of any precautionary or recall operations which may prove necessary.

## **Quality Assurance:**

Supplier acknowledges XLR8's right of access to its facilities, product, and/or related quality records at any time, by XLR8, its customer, or regulatory authorities in order to verify quality of products or work. Right of access may be limited to only those records and product applicable to XLR8's products or contracts.

Supplier to notify XLR8 immediately of unexpected anomalies, nonconformances, changes in product and/or process, changes in suppliers, and/or changes in manufacturing facility location. XLR8 reserves the right to approve such changes or incidents before work is allowed to proceed.

Supplier acknowledges it shall apply suitable corrective action when presented with XLR8 complaints or nonconformance reports.

Records pertaining to the manufacture, inspection and test of XLR8's products shall be retained for a minimum of seven (7) years.

All applicable certificates to be sent with each shipment.

All purchasing requirements to be flowed down to sub-tier suppliers or subcontractors.

## **Invoices:**

All invoices must reference XLR8 purchase order number, parts ordered (including revision if applicable), and price. XLR8 will only make payment for the qty of parts received using purchase order unit price and unit of measure. If shipment is made earlier than specified on the order, XLR8 reserves the right to withhold payment until the actual due date.

**Change Order Notification:**

XLR8 Services, Inc (XLR8) manufactures regulated medical devices for specific customers that fall under the purview of the Food and Drug Administration (FDA). These devices require various levels of approval and review by the FDA. For the sake of patient safety and compliance to FDA regulations, XLR8 must be notified prior to process and material changes by our suppliers and sub-tier suppliers. Written approval from XLR8 is required *before* changes can be implemented. At a minimum, prior notification and written acceptance is required in the following cases:

- Modification of material grade, quality, or characteristics, whether in the raw or finished state.
- Change in material supplier.
- A change in process specification(s) outside previously validated process parameters.
- Obsolescence/End of Life
- Part number change

Any risk arising from changes made by suppliers or sub-tier suppliers without XLR8 written approval is solely the responsibility of the supplier or sub-tier supplier. The most effective method to limit or eliminate risk is to contact XLR8 and receive written approval of the change *prior to implementation*.

**U.S. Export Controls:**

"XLR8 Services, Inc. fully complies with all U.S. export control laws and regulations ("U.S. Export Controls"), including without limitation the International Traffic in Arms Regulations (ITAR), the Export Administration Regulations (EAR), and the foreign asset control and specially designated nationals regulations administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury. All products, technical data, software or technology to be exchanged between XLR8 Services, Inc. and your company must be handled in compliance with U.S. Export Controls."

"As a Term and Condition of Purchase, it is the suppliers' responsibility to provide XLR8 Services, Inc. with export classification data (USML category and sub category — ITAR) or (ECCN — EAR) on the Items procured from the supplier to enable XLR8 Services, Inc. to control such Items in compliance with U.S. Export Control requirements. Furthermore, XLR8 Services, Inc. requires its suppliers to use at least reasonable efforts to cooperate with and assist XLR8 Services, Inc. in the correct identification and classification of Items provided by the supplier or manufactured to supplier's requirements, designs and/or specifications, which may be subject to U.S. export control regulations. If the supplier does not or otherwise fails to make reasonable efforts to provide classification information and assist XLR8 Services, Inc. and/or its related companies, as the case may be, to correctly identify or classify supplier Items subject to U.S. export control regulations, then XLR8 Services, Inc. shall have the option, at XLR8 Services, Inc.'s sole discretion, to (a) return all Items not classified due to your breach of obligations hereunder for a refund in full without penalty, fee or cost to XLR8 Services, Inc. and you shall further reimburse XLR8 Services, Inc. for any additional costs or damages suffered by XLR8 Services, Inc. as a result of procuring replacements, including without limitation delay penalties paid by XLR8 Services, Inc. to its customers, and/or costs of replacement Items over and above the cost of the Items returned to you; or (b) keep the Items not classified due to your breach of obligations hereunder and you shall (i) reimburse XLR8 Services, Inc. for all costs and fees incurred by XLR8 Services, Inc. in classifying the Item(s) for itself (including without limitation) attorneys' or consultant fees and/or costs associated with preparing, submitting and obtaining a response to a Commodity Jurisdiction request (provided however XLR8 Services, Inc. has no obligation to submit such a Commodity Jurisdiction request); and (ii) indemnify and hold harmless XLR8 Services, Inc. from any violation and/or penalties incurred by XLR8 Services, Inc. and/or its related companies which result or arise from inaccurate classification of Items during the process of exporting the Items from the U.S. and/or during the import process at the country of destination."

"The items, goods, technology and services covered hereunder ("Restricted Items") do not refer only to physical products and tangible items but also includes technical data, software, technology, know-how or other intangibles and services which are subject to the U.S. Export Controls."

"The supplier will also ensure that all company personnel who represent the supplier in a visit to XLR8 Services, Inc. will identify their citizenship/nationality. In the event XLR8 Services, Inc. informs Seller that restricted items will be involved or accessible on a site visit to XLR8 Services, Inc.'s facility or Seller otherwise knows that restricted items will be involved or accessible on a site visit to XLR8 Services, Inc.'s facility, Seller will only send personnel on such a site visit who are authorized by the U.S. export regulations to receive and work with restricted items."

**Conflict Minerals Rule and Counterfeit Parts Prevention**

Unless Seller provides XLR8 written notice prior to shipment, Seller warrants to XLR8 that such shipment does not contain (a) Conflict Minerals from any Covered Country, as defined by Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Conflicts Mineral Rule or (b) any inauthentic or counterfeit parts.