

Terms & Conditions

Zeptive, Inc.

Contained herein are the Terms & Conditions for all products designed, manufactured, and/or sold (hereinafter “Product”) by Zeptive, Inc. (hereinafter “Seller”), which is binding on the purchaser of said Product (hereinafter “Buyer”) as set forth below.

- (1) Acceptance. All sales are subject to and expressly conditioned upon the terms and conditions contained herein and upon Buyer’s assent thereto, which is effective upon the order of the Product. These Terms & Conditions shall also apply to and govern any free trial and/or demo of a Product (“Demo Product”). The email confirmation sent by Zeptive following the order and acceptance of the Terms shall constitute the agreement under these Terms to fulfill Buyer’s needs. No variation of these Terms & Conditions will be binding upon Seller unless agreed to in writing and signed by an officer or other authorized representative of Seller.

- (2) Changes to Orders. Orders may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery.
 - a. Cancellation. Buyer may not cancel its order unless such cancellation is expressly agreed to in writing by Seller. In such event, Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Seller by its suppliers, and any other cost resulting from cancellation of this order by Buyer which is permitted by Seller. Certification of such costs by Seller’s independent public accountants shall be conclusive and binding on the parties hereto.

 - b. Returns. Product may be returned for credit or exchange within 30 days of delivery by the carrier in strict compliance with Seller’s return shipment instructions. Returns items must be in like new condition (as determined by Seller, in Seller’s sole and reasonable discretion) and will be inspected upon receipt. Any returned item(s) will be subject to a twenty percent (20%) processing fee. If the devices are damaged, additional processing fees will apply commensurate with the degree of applicable damage.

 - c. Demo Product. To the extent that Seller allows Buyer to test any Demo Product free of charge for a trial period. Trial period will extend for no more than 45 days after Demo Product ship date except with Seller’s written permission. At the

conclusion of the trial period, Seller will return the device, alternatively Buyer may purchase device from Zeptive. Seller may terminate Buyer's use of such Demo Product and require its immediate return to Seller for any reason at any time. If Demo Product is not returned within 10 days of trial completion, then the Seller will invoice the Buyer for the Demo Product. Seller will pay for all shipping charges, except in the event that the Demo Product is not returned within the designated time period.

- d. **Demo Product Inspection Upon Return:** If any Demo Product has been tampered with, vandalized, or otherwise damaged in any manner, through the actions of any person (adult or minor), Buyer shall be liable to Seller and shall be immediately charged a damage fee equal to fifty (50%) percent of the then-current list price of a new replacement Demo Product unit.
- e. **Deposit:** At the sole discretion of Seller, Buyer may be required to provide an advance Demo Product deposit equal to fifty (50%) percent of the then-current list price of a new Demo Product device.

(3) **Delivery.** All sales are free on board (FOB) at Seller's shipping point, unless otherwise noted. Delivery of the goods to the carrier at Seller's shipping point shall constitute delivery to Buyer, and Buyer shall bear all risk of loss. Seller reserves the right, in its discretion, to determine the exact method of shipment. Seller reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries.

- a. **Delay.** Any delay in delivery of any Product shall not relieve Buyer of Buyer's obligations to accept remaining deliveries.
- b. **Duty of Inspection.** Immediately upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the same and shall notify Seller in writing of any claims for shortages, defects, or damages, and shall hold the goods for Seller's written instructions concerning disposition. If Buyer fails to so notify Seller within five (5) days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by Buyer.
- c. **No Liability for Act of God.** Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including, without limitation, unsuccessful reactions, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, pandemic-induced issues, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.

- (4) Allocation of Goods. If Seller is unable for any reason to supply the total demands for goods specified in Buyer's order, Seller may allocate its available supply among any or all Buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result therefrom.
- (5) Payment is due in advance unless other terms are issued and agreed upon by Zeptive, Inc. Accepted forms of payment include Credit Card, ACH, U.S. Dollar (USD) Wire Transfer, and Checks. In the event of a wire transfer, customer is responsible for duties, taxes, and any origination bank fees or other fees incurred. For tax exempt U.S. government, state, or municipal entities, the terms of sale are net fifteen (15) days as of the date of invoice, unless otherwise stated. With regard to international commercial terms, Ex Works rules apply, with the specified place of pickup as Burlington, Massachusetts, United States. ALL PRICES IN USD. Additionally, if the financial condition of Buyer results in the insecurity of Seller, in its sole and unfettered discretion, as to the ultimate collectability of the purchase price, Seller may, without notice to Buyer, delay or postpone the delivery of the products; in the event that this occurs, Seller, at its option, may change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of said products. In the event of default by Buyer in the payment of the purchase price or otherwise, of this or any other order, Seller, at its option, without prejudice to any other of Seller's lawful remedies, may defer delivery, cancel any agreement that may be in place, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price, and Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof. Prices for Zeptive Products and other products and services offered via the Services may change at any time, and the Services do not provide price protection or refunds in the event of a price reduction or promotional offering.
- (6) Subscriptions. Some parts of the Service are billed on a subscription basis ("Subscription(s)"), which will be billed in advance on a recurring and periodic basis ("Billing Cycle"). Billing cycles are set either on a monthly or annual basis, depending on the type of subscription plan selected. At the end of each Billing Cycle, the Subscription will automatically renew under the exact same conditions unless canceled by Buyer or Zeptive, which may be done through the online account management page or by contacting Zeptive directly. By submitting the payment information, Buyer automatically authorizes Zeptive to charge all Subscription fees incurred through your account to any such payment instruments. Should automatic billing fail to occur for any reason, an electronic invoice will be sent indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice. In the event Buyer fails to pay in full, Zeptive may terminate the Subscription(s) at its discretion.

- a. Fee Changes. Zeptive, in its sole discretion and at any time, may modify the Subscription fees for the Subscriptions. Any Subscription fee change will become effective at the end of the then-current Billing Cycle. Zeptive will provide a reasonable prior notice of any change in Subscription fees. The continued use of the Service after the Subscription fee change comes into effect constitutes your agreement to pay the modified Subscription fee amount.
- (7) Taxes & Other Charges. Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller or, in lieu of such payment, Buyer shall provide Seller, at the time the order is submitted, an exemption certificate or other document acceptable to the authority imposing the tax, fee, or charge.
- (8) Pricing. Prices shown are in United States Dollars (US\$) and are subject to change. Buyer shall contact Seller for current prices if this information is required prior to placing an order. Written quotations are guaranteed for sixty (60) days.
- (9) Seller's Warranties. Seller warrants that for twelve (12) months AFTER SHIPMENT that the system hardware shall work as intended. In the event that an issue occurs within the warranty period, Zeptive shall replace the defective device(s) or sensor(s) at no cost to Buyer. THE FOREGOING WARRANTY IS EXCLUSIVE, AND SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S GROSS NEGLIGENCE. SELLER'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING UNDER THESE TERMS AND CONDITIONS SHALL NOT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY BUYER TO SELLER FOR THE PRODUCTS GIVING RISE TO THE CLAIMS IN QUESTION.

- a. Exception to Express Warranty. Seller’s warranties made in connection with this sale shall not be effective if Seller has determined, in its sole discretion, that Buyer has misused the products in any manner, has failed to use the products in accordance with industry standards and practices, or has failed to use the products in accordance with the operation guidelines furnished by Seller.
 - b. Issues & Claims. If there is an issue with the Product, Seller will repair or replace the unit upon receipt of the defective unit. All claims must be brought within one (1) year of shipment, regardless of their nature, unless the claim is regarding an express warranty outlined in Section (9).
 - c. Patent Disclaimer. Seller does not warrant that the use or sale of the Products delivered will not infringe the claims of any United States or other patents covering the product itself, or the use thereof in combination with other products, or in the operation of any process.
 - d. No License. Seller does not convey any rights regarding license under its patent or any other rights related to intellectual property.
 - e. Tertiary Components. Seller does not warrant anything in regard to the tertiary components within the Device, such as the battery, particularly with respect to the lifespan.
 - f. Vandalism. If the Device is vandalised in any manner, through the actions of a person--whether an adult or minor--Seller disclaims all liability for the damage, any resulting defects, or the cost of a replacement Device.
 - g. Third Party Services. In the event that a product or service of a vendor, which operates a cloud-based or other electronic service, fails to the point that it affects the operation of Zeptive devices, Seller disclaims all warranty Furthermore, the failure of a third-party shall not be deemed to render the Device defective or otherwise inoperable.
 - h. Demo Products. Buyer expressly acknowledges and agrees that (i) any Demo Products, and any Buyer use thereof, is provided “as is” and without representation or warranty of any kind or nature; and (ii) Buyer’s use of any Demo Products is at Buyer’s own sole risk, and Seller shall have no liability to Buyer for any claims arising therefrom.
- (10) Medical Disclaimer. The Device, systems, and other Zeptive products do not diagnose a person with any disease or ailment, nor are they guaranteed to find all vaping and/or drug use. Zeptive is not preventing addiction, drug use, vaping, illness, death, and in the event any of this occurs, Zeptive is not liable for any resulting damage. Furthermore, Zeptive does not endorse, warrant, or guarantee the effectiveness of any recommendations, courses of action, resources, referrals, data, results, healthcare providers, Addiction

Specialists, procedures, products or other information that may be available, directly or indirectly. You understand and agree that Zeptive does not provide medical or drug addiction related services, diagnosis, treatment or advice. You understand and agree that the Zeptive vape detector or air quality monitor is not a diagnostic test and that the results must be considered in the context of broader medical and/or addiction management by a healthcare provider or other appropriately-licensed party. You should not make any medical decisions on the basis of the Results alone without first consulting a healthcare provider or other appropriate licensed party. Nothing contained in the Zeptive detector or made available through the Website, Platform, or Services is intended to constitute the practice of medicine or the provision of medical care or to otherwise create a patient-medical provider relationship between Zeptive and you or between Zeptive and the Subject. Your reliance on any information provided by Zeptive, its Partners, and their respective employees, agents or representatives, or otherwise appearing on our Website or Platform, is solely at your own risk.

- (11) Buyer's Warranties. Buyer expressly represents and warrants to Seller that Buyer will properly test and use the Products in accordance with the practices of a reasonable person and in strict compliance with all applicable laws and regulations, now and hereinafter enacted. Buyer agrees to comply with instructions, if any, furnished by Seller relating to the use of the products and not misuse the products in any manner.
- a. Further Representations & Indemnity. Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph 12, "Buyer's Use" and that any such use of Products will not violate any law or regulation. Buyer agrees to indemnify and hold harmless Seller, its employees, agents, successors, officers, and assigns, from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other third parties, arising out of, directly or indirectly, the use of Seller's products, or by reason of Buyer's failure to perform its obligations contained herein.
- b. Notice. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident or incident involving Seller's products that results in personal injury or damage to property. Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports, and tests made by Buyer, or made available to Buyer by others. The furnishing of such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute an assumption of any liability for such accident or incident by Seller.

- c. Data. Buyer grants to Zeptive the sole, exclusive, unlimited, transferable license—with right to grant sublicenses—to the data collected from the products of Zeptive, so that it may use such data for research and development purposes; provided, however, that the terms of any sublicense shall expressly conform to the terms and conditions of this Agreement. Buyer acknowledges that none of the data collected or used will constitute Personally Identifying Information, and with regard to Zeptive's use of such information, the Privacy Policy can be found at www.zeptive.com/privacy
 - d. Marketing. Buyer agrees to enter into discussions with Zeptive regarding the use of its name, and the fact that it is a customer, within various marketing materials. The mutual agreement for this use, if any, shall be set forth in another writing signed by both Parties.
- (12) Compliance with Laws & Regulations. Seller certifies that to the best of its knowledge, its products are produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and the Occupational Safety and Health Standards Act of 1970 and regulations, rules and orders issued pursuant thereto. Buyer will comply in all material respects with applicable laws, rules, regulations, orders and industry standards, (including those with respect to privacy and data protection) relating to the use of Zeptive products, technology or software.
- (13) Buyer's Use. The Products of Zeptive are intended for use as monitors for vaporizer aerosols, and air quality. It contains lithium-ion battery cells to power the device. Typical applications include: monitoring indoor places where people may be using vapes or other smoking products, as well as observing the overall air quality and ventilation of rooms. The systems of the Product must be setup, installed and operated according to the installation instructions and used within the intended use and configuration(s).
- a. Export Control. Buyer acknowledges that Zeptive is subject to regulation by Agencies of the United States Government, including the U.S. Department of Commerce, which prohibits export or diversion of certain products, technology and software to certain Countries. Any and all obligations of Zeptive made hereunder to provide products, technology, software and technical assistance, will be subject in all respects to such United States laws and Regulations, including the Export Administration Act of 1979, as amended and the Export Administration Regulations issued by the U.S. Department of Commerce. Buyer warrants that it will comply in all respects with the export and re-export restrictions placed on Zeptive products, technology and software by the United States Government; and to specifically not export or re-export such products, technology and software into any Country embargoed by the United States; to anyone on the U.S. Treasury Department's List of Specially Designated Nationals or the U.S. Department of Commerce Denied Parties List or Entity List or any other restricted party list established by the U. S. Government. Buyer agrees that Buyer will not use Zeptive

products, technology and software for any purposes prohibited by United State law, including, without limitation, the development, design, production, manufacture or use of nuclear, chemical or biological weapons or missile activities. Buyer will take all actions which may be reasonably necessary to assure no end-user contravenes such United States laws and Regulations.

- b. Anti-Bribery. Buyer will not directly or indirectly, offer to pay, or authorize such offer or payment, of any money or anything of value to improperly or corruptly seek to influence any Government Official (as defined below) or otherwise violate applicable anti-corruption legislation, including all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act (Bribery Act 2010), in connection with any Zeptive product, technology or software obtained by Buyer pursuant to this Agreement. For purposes of this Agreement, a “Government Official” is broadly defined as and includes: (i) any elected or appointed government official; (ii) any employee or person acting for or on behalf of a government official, agency, or enterprise performing a governmental function; (iii) any political party officer, employee, or person acting for or on behalf of a political party or candidate for public office; (iv) an employee or person acting for or on behalf of a public international organization; or (v) any person otherwise categorized as a government official under local law; where “government” is meant to include all levels and subdivisions of non-United States governments (e.g. local, regional or national and administrative, legislative or executive).
- (14) Limitation of Product. Seller’s products are not designed, intended, or authorized for use as health products, or for any application in which the failure of Seller’s product could create a situation where personal injury or death may occur, and are not to be used for any other purposes, including but not limited to, in foods, drugs, medical devices or cosmetics for humans or animals. Buyer acknowledges that the products have not been tested by Seller for safety and efficacy in food, drug, medical device, cosmetic, commercial, or any other use. No products purchased from Seller shall, unless otherwise stated, be considered to be foods, drugs, medical devices or cosmetics. Should Buyer purchase or use Seller’s products for any such unintended or unauthorized application, Buyer shall indemnify and hold Seller and its officers, employees, subsidiaries, affiliates, and distributors harmless against all claims, costs, damages, and expenses, and reasonable attorney fees arising out of, directly or indirectly, any claim of personal injury or death associated with such unintended or unauthorized use, even if claim alleges that Seller was negligent regarding the design or manufacture of the part. In the case of a defect in the product, Seller shall not be liable for any damages which may result, including, but not limited to, loss of revenue, property, or life. In any event, Seller’s liability shall be limited to replacement of the defective unit.
- (15) Changes by Seller. Seller reserves the right to make changes, without further notice, to any product, software including but not limited to the firmware, app, web console,

datasheet, technical data bulletin, or website. Seller makes no warranty, representation, nor guarantee regarding the suitability of its product for any particular purpose, nor does Seller assume any liability arising out of the application or use of any product and specifically disclaims any and all liability, including without limitation, consequential or incidental damages.

(16) Technical Assistance. At Buyer's request, Seller may, at Seller's discretion, furnish technical assistance and information with respect to Seller's products. In the event of such technical assistance, Seller makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for a particular purpose with respect to technical assistance or information provided by Seller or Seller's personnel. Any suggestions by Seller regarding the use, selection, application, or suitability of the Product shall not be construed as an express warranty unless specifically designated as such in writing, which is signed by an officer or other authorized representative of Seller.

(17) Miscellaneous. Seller's failure to strictly enforce any term or condition of this order, or to exercise any right arising hereunder, shall not constitute a waiver of Seller's right to strictly enforce such terms or conditions or to exercise such right thereafter. All rights and remedies under this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only; they form no part of the terms and conditions and shall not affect their interpretation. This Agreement shall be binding upon inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

Governing Law. All disputes as to the legality, interpretation, application, or performance of this order, or any of its terms and conditions, shall be governed by the laws of the Commonwealth of Massachusetts, exclusive of its conflict of laws and conflict of law principles. All parties consent to the jurisdiction of the Massachusetts courts, in addition to agreeing that the venue is proper within the county of Middlesex, Massachusetts. No sale pursuant the Terms hereunder shall be superseded by local ordinance.

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