

## USA-XANTREX TECHNOLOGY INC.

## Supplier – Purchase Order Terms &amp; Conditions

1. **The Agreement.** This agreement ("Agreement") is entered into between Xantrex Technology Inc., a Washington corporation ("Xantrex"), and the party described as the supplier ("Supplier"). This Agreement, together with any purchase order ("Purchase Order") issued by Xantrex to the Supplier, sets forth all of the terms and conditions for the purchase by Xantrex and sale by the Supplier of those goods, items and products ("Products") identified on the Purchase Orders. NO CHANGE, ADDITION OR MODIFICATION OF THIS AGREEMENT, INCLUDING ANY TERMS CONTAINED IN SUPPLIER'S ACKNOWLEDGMENT OR SUPPLIER'S TERMS AND CONDITIONS OF SALE OR IN MANUAL ALTERATIONS TO A PURCHASE ORDER, SHALL BECOME BINDING UPON XANTREX UNLESS EXPRESSLY ACCEPTED IN A WRITING SPECIFICALLY REFERENCING THIS AGREEMENT AND SIGNED BY AN AUTHORIZED SIGNATORY OF XANTREX.
2. **Purchases.** Upon the execution and delivery of a Purchase Order or the electronic transmission of substantially similar information by Xantrex to the Supplier, the Supplier will return a written acknowledgement or acceptance of such Purchase Order to Xantrex within one business day, and upon such acceptance which is without exception or qualification by the Supplier, the parties will be deemed to have entered into a binding agreement with respect to the subject matter of the Purchase Order.
3. **Delivery.** Xantrex's production and delivery schedules are based upon delivery to Xantrex of the Products ordered by the delivery date and to the delivery destination set out in the Purchase Order. Time therefore is of the essence. If the delivery date cannot be met, the Supplier must inform Xantrex in writing of the same before the effective date of the Purchase Order, and in any event, within seven days before the delivery date. If deliveries are not made on the delivery date, the Supplier will be in breach without the right to make a later conforming tender and the Supplier shall be responsible for any costs, expenses, damages or losses suffered or incurred by Xantrex arising out of such late delivery. (to a maximum of the cost of the Product). Without limiting the generality of the foregoing, Xantrex may, at its option, require that delayed Products be shipped by the Supplier to Xantrex using the fastest commercially feasible means.
4. **Product Forecasts.** Any product forecasts provided by Xantrex to the Supplier are strictly for general guidance and are not binding upon Xantrex.
5. **Shipment; Title and Risk of Loss.** Title and risk of loss will pass to Xantrex on delivery at the FOB point listed on the Purchase Order, except that damage to Products due to improper or inadequate packing shall remain the responsibility of the Supplier. If requested by Xantrex, the Supplier will promptly forward to Xantrex a copy of the bill of lading or shipping receipt evidencing the shipment.
6. **Inspection and Acceptance.** Notwithstanding payments or inspections prior to shipment or while in transit, the Products are subject to final inspection, testing and acceptance by Xantrex at the delivery destination. Xantrex may, without limitation to its other rights under the Agreement or at law, reject the whole or any part of the Products if the whole or any part of the Products:
  - (a) are not identical to samples provided to Xantrex;
  - (b) are not in compliance with the specifications relating to such Product;
  - (c) are in a different quantity from that specified in the applicable Purchase Order or are goods substituted for Products specified in the applicable Purchase Order;
  - (d) arrive more than seven days prior to, or subsequent to, the delivery date; or
  - (e) is the subject of any representation or warranty made by the Supplier which is incorrect in any material respect or the subject of any agreement or covenant made by the Supplier which has not been complied with fully by the Supplier.
7. **Nonconforming Orders.** Without limiting Xantrex's other rights and remedies, the Supplier agrees to refund to Xantrex the purchase price of any Products rejected. If the Supplier requests that such rejected Products be returned to it, Xantrex will return them at the Supplier's risk and expense. Xantrex will have the right to cancel any other Purchase Order with the Supplier for similar Products to those rejected. If Xantrex accepts a quantity of Products that was in excess of the quantities set out in a Purchase Order, they will be accepted at the price set out in the Purchase Order.
8. **Price.** Xantrex will pay the price for Products stated on the Purchase Order. No charge will be made for packaging and containers or shipping and insurance costs unless otherwise agreed in writing by Xantrex.
9. **Invoicing.** For each shipment, the Supplier will submit an itemized invoice that includes, at minimum, the Purchase Order number, Xantrex part numbers (or the Supplier part numbers if no Xantrex part numbers are specified), billing quantity, unit price, confirmation of payment terms, shipping information and separately states the amounts, if agreed to by Xantrex, for shipping, insurance and applicable sales tax (and itemizes any Products not subject to sales tax).
10. **Payment Terms.** Payment terms will be as indicated on the Purchase Order. Xantrex may set-off against a payment to the Supplier any amount or counterclaim Xantrex has against the Supplier.
11. **Specifications.** Any specifications referred to in a Purchase Order will be deemed to be incorporated herein by reference as if fully set forth. Xantrex will at all times retain title to all specifications furnished by Xantrex to the Supplier. The Supplier will use such specifications only in connection with the Purchase Order, and will not disclose such specifications to any person, firm or corporation other than Xantrex or the Supplier's employees, subcontractors, or governmental inspectors. The Supplier will, upon Xantrex's request or upon termination of the Agreement, promptly return all such specifications to Xantrex.
12. **Warranties.** The Supplier represents and warrants that it will transfer to Xantrex on delivery good title to the Products, free from claims of others, and that: (a) the Products will be free from defects in materials, workmanship and design; (b) the Products will conform and perform strictly with all specifications (whether Xantrex's, the Supplier's or a third party's); (c) the design, manufacturing, purchase or use of any of the Products will not violate or infringe any other person's copyright, trade name, trademark, trade dress, patent or other intellectual property or other proprietary right; and (d) the Products will be merchantable and fit for the purpose and use intended. These representations and warranties will survive delivery and acceptance or termination of the Agreement.
13. **Remedy for Breach of Warranty.** Without limiting Xantrex's other rights and remedies, upon a breach of a warranty specified above, the Supplier will, promptly upon receipt of notice from Xantrex, correct at the Supplier's expense any defect either by repairing or replacing the Products. If the defective Products are obsolete or no longer required by Xantrex, Supplier will refund Xantrex the purchase price of the Products. If the Supplier requests that such defective Products be returned to it, then Xantrex will return them at the Supplier's risk and expense. Xantrex's continued use of the Products pending repair or replacement will not constitute a waiver of Xantrex's rights.
14. **Supplier's Indemnities.** The Supplier will indemnify, defend and hold harmless Xantrex (and its officers, directors, agents, employees, shareholders and affiliates) from and against any and all demands, claims, causes of action, suits, judgments, liabilities, losses, damages and other expenses (including attorneys' fees) arising out of or relating to: (a) a claim that the Product violates or infringes any intellectual property rights of others; (b) breach of any other representation and warranty, or other obligation, under the Agreement; and (c) injuries to or death of any person or damage to any property caused by the Product except where the same arose solely from the gross negligence or willful misconduct of Xantrex.
15. **Cancelled Orders.** Xantrex may cancel Purchase Orders, without further obligation, by providing at least seven days' notice to the Supplier. If Xantrex cancels a Purchase Order for custom Products, Xantrex will pay the direct costs incurred by the Supplier for finished products, raw materials and work in process. The number of finished products and units in process will not exceed the number on the Purchase Order for such custom Products. Xantrex will not pay for raw materials and assemblies of work in process that may be used by the Supplier for the manufacture of associated products or diverted for any other purpose. The Supplier will provide documentation sufficient to Xantrex to verify its claims for payment under this section.
16. **Termination.** If the Supplier (a) fails to deliver the Products ordered hereunder by the delivery date or breaches any of its other obligations, or (b) becomes insolvent or any petition or order in bankruptcy is presented or made against it, Xantrex will have the right to terminate (without prejudice to any accrued claims or rights) any Purchase Order or the Agreement upon giving written notice to the Supplier at its last known address or facsimile number.
17. **Partial Deliveries.** Upon the exercise of the right to terminate any portion of a Purchase Order, Xantrex may, in its sole discretion, retain and pay for all or any portion of the Products delivered prior to its cancellation of such part of the Purchase Order, subject to its obligation to pay for the Products retained, or may return such Products to the Supplier, in whole or in part, at the Supplier's expense.
18. **Modification.** Xantrex will have the right, from time to time and without prior notice to the Supplier, to make changes as to packing, testing, delivery destinations, specifications, and postponements of delivery dates. The Supplier will immediately notify Xantrex of any increases or decreases in its costs caused by such changes and an equitable adjustment in the price or other terms hereof will be agreed upon in writing as an amendment to the Purchase Order. Except as set out in this paragraph, the Supplier shall not make any changes in the materials, processing or manufacturing methods, instructions, drawings or specifications relating to the Products without the prior written approval of Xantrex and the provision of samples if required by Xantrex.

19. **Compliance with Laws.** The Supplier agrees to observe and comply with, in the performance of the Agreement, all applicable foreign, federal, provincial, state and local laws, rules and regulations.

20. **Material Safety Data Sheets.** Prior to the shipment of any Product, the Supplier will provide Xantrex with all Material Safety Data Sheets and Environmental Data Sheets related to the Product as required by law. If the Products to be shipped are classified as Dangerous Goods the supplier will comply with regulations governing the Transport of Dangerous Goods.

21. **Taxes.** Apart from applicable sales taxes, all taxes relating to the Purchase Order will be borne by the Supplier.

22. **No Assignment or Delegation.** The Supplier may not delegate any duties or obligations or assign any rights under the Agreement (other than the right to receive payments from Xantrex) without the prior written consent of Xantrex.

23. **Law.** The Agreement will be governed by and interpreted exclusively in accordance with the laws of the State of Washington, without reference to provisions concerning conflicts of laws. The provisions of the *United Nations Convention on Contracts for the Sale of Goods* are hereby excluded.

24. **Arbitration.** Any controversy or claim arising out of or relating to the Agreement, or the breach of it, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be Seattle, Washington, United States of America. There shall be one arbitrator.

25. **Entire Agreement.** Unless a separate written supply agreement is entered into between Xantrex and the Supplier modifying these terms and conditions, this Agreement constitutes the entire agreement between the parties concerning the Products and the subject matter of this Agreement.