

XACTIV Inc. Terms and Conditions of Purchase – Rev4

1. **BUYER:** Buyer as used herein means XACTIV Inc., DBA Torry Pines Research, its successors, and assigns.
2. **ACCEPTANCE:** Acceptance of Buyer's purchase order shall be limited to the following terms and any terms or conditions imposed by Seller are proposals which do not become part of the purchase order unless Buyer consents thereto in writing. Seller's shipment of goods in lieu of acceptance as herein provided may, at the sole election of Buyer, be treated as Seller's acceptance of the following terms and conditions.
3. **PRICE:** If no price is specified herein it is agreed that the price will be the lowest price for like goods of like quality charged by Seller from the date hereof until the date of delivery and in no event will the price be higher than previously quoted to or charged of the Buyer unless notification is received from the Seller and the prices are authorized by the Buyer.
4. **WARRANTIES, INDEMNIFICATION AND ATTORNEY FEES:** In addition to all warranties implied in fact or law, Seller expressly warrants that all goods covered by this order (i) shall be of good quality and workmanship and free from all defects; (ii) shall conform to all specifications, drawings, descriptions and samples approved by Buyer; (iii) shall be merchantable. Acceptance of or payment for goods shall not constitute a waiver of warranties. Buyer's approval of samples furnished for inspection is to assist Seller and does not relieve Seller from responsibility to deliver goods conforming to all specifications, drawings, and description.

Seller shall indemnify and hold Buyer harmless against any loss and expense Buyer may sustain because of any defect in the Products hereunder or of failure of Seller to deliver Products as herein specified. Seller agrees to pay reasonable attorneys' fees for Buyer in any action or in any proceedings in any court, directly or indirectly involving a defect in Products supplied hereunder or of the failure of Seller to deliver the Products. Seller expressly warrants and agrees it will not disclose and will maintain the confidentiality of all matters and designs of Buyer that Seller has access to or information about, directly or indirectly, as a result of this purchase order.
5. **TIME OF DELIVERY:** If this order provides for partial shipment, Buyer may suspend shipment of the balance upon notice to the Seller, such suspended shipments to be shipped on or before the last shipping or release date specified. Seller's failure to deliver as specified permits cancellation by Buyer of this order, or any part thereof, without liability to Buyer.
6. **CANCELLATION:** In addition to all other rights provided herein and by law, Buyer reserves the right to cancel this order in whole or in part if the goods do not conform to any express or implied acceptance criteria, specification, or test, or if Seller fails to make deliveries as directed by Buyer, or upon Seller's

insolvency. If this order requires or authorizes the delivery of Products in separate lots to be separately accepted and if any Products do not conform hereto, Buyer may reject any or all Products affected, or the entire installment, and any undelivered installments. Buyer reserves the right to cancel any part of this order with respect to Products which have not actually been shipped by Seller if Buyer's ability to receive or use the Products is affected by any cause beyond its reasonable control, and Buyer shall be charged only (i) the contract price for conforming goods when delivered and (ii) Seller's actual costs with respect to the undelivered Products under this contract (including sums payable or paid by Seller to settle obligations assumed under the authority of this purchase order), such total charge to be in no event greater than the contract price.

7. COMPLIANCE WITH LAW: Seller agrees to indemnify and save Buyer, its successors, assigns, customers and agents harmless against all costs, damages, claims and demands for actual or alleged direct or contributory infringement of any patents, either in the United States of America or any foreign countries, trademarks in the United States of America or any foreign countries or similar rights because of the sale or use of any of the Products specified herein. By acceptance hereof Seller warrants that in its performance hereunder it will comply with all applicable federal, state and local laws, rules, regulations and administrative and executive orders, including but not limited to those pertaining to discrimination, contract renegotiation, maximum ceiling prices, fees for solicitation of contracts, security and inspection of records.

8. INSURANCE AND INDEMNIFICATION: If Seller is to perform any services for Buyer on any premises owned or controlled by Buyer or elsewhere, Seller agrees to: (i) keep the premises and work free and clear of all mechanic's liens, and furnish to Buyer proper affidavits and/or waivers certifying thereto; (ii) perform the work at Seller's sole risk prior to its written acceptance by Buyer and replace at Seller's sole expense all work damaged or destroyed by any cause whatsoever, (iii) indemnify and save Buyer harmless against any and all loss, damage and expense, direct or indirect, caused by or arising from any damage or injury to property or person, including, without limitation, damage or injury to Seller's or Buyer's employees or property, caused by or arising from or in connection with the performance of work hereunder; (iv) carry workman's compensation insurance covering all employees to be used by Seller in connection with such work, and public liability insurance covering Seller's liability hereunder; (v) prior to commencing work hereunder furnish to Buyer certificates of its insurance carrier showing that such workman's compensation and liability and property damage insurance is in force; (vi) indemnify, and save Buyer harmless against any and all liability arising hereunder by reason of any applicable unemployment insurance laws.

9. DISCLOSURE OF INFORMATION: Any unpatented knowledge or information concerning Seller's products, methods or manufacturing processes which Seller may disclose to Buyer shall, unless otherwise specifically agreed in writing signed by the parties hereto, be deemed to have been disclosed as part of the consideration for this order, and Seller shall not assert any claim against Buyer as the result of Buyer's use thereof. All drawings, specifications or samples loaned to Seller for production

purposes must be considered strictly confidential and shall be preserved in good order, to be returned promptly upon completion of work or termination of order.

10. **CHANGES IN SPECIFICATIONS:** The Buyer reserves the right to make such changes in specifications and designs as may be necessary or desirable after this order is accepted. Any difference in contract price or delivery time resulting there from shall be agreed upon in writing and signed by the parties hereto.

11. **DIES, TOOLS, JIGS:** Unless otherwise herein agreed, die equipment, tools, jigs, fixtures and patterns used in the manufacture of goods to be furnished hereunder shall be supplied by and at the expense of the Seller and shall be kept in good condition, and shall be replaced when necessary by Seller without expense to Buyer. Buyer has the option at any time to reimburse the Seller for the whole or any part of said dies, tools and patterns and replacements, and become the owner and entitled to the possession of same. Seller shall be responsible for the proper maintenance and safe delivery to Buyer of all die equipment, tools, jigs, fixtures and patterns paid for or supplied by Buyer and the same shall be subject to removal from Seller's plant on Buyer's written notice.

12. **INSPECTION OF PRODUCT:** Material shall not be deemed accepted until after final inspection. The making or failure to make any inspection of, or payment for or acceptance of, the goods, shall in no way impair Buyer's right to reject nonconforming goods. Defective material will be returned at the Seller's expense including all transportation charges. Replacement of defective material is subject to the option of the Buyer.

13. **PACKAGING:** Materials must be packed and marked in such manner as to permit securing lowest transportation rates. No additional charge for crating, packing, etc. will be allowed unless specifically authorized.

14. **SUSPENSION:** The Seller shall, upon Buyer's request, suspend shipment and delivery of material or equipment, and all work and operations hereunder, for such period as Buyer may request.

15. **PATENTS:** Seller guarantees that materials or supplies specified herein and their sale or use, alone or in combination, will not infringe on any United States or Foreign Patents and agrees to indemnify the Buyer against all judgments, decrees, costs, and expenses resulting from any such alleged infringement.

16. **RIGHT TO INSPECT SELLER'S FACILITY:** In addition to all other rights of inspection herein expressed or implied by law, Buyer & the buyer's customers reserve the right to inspect any work being performed by Sellers and inspect Seller's equipment and facilities, at any time during business hours upon reasonable notice. No delay or omission by Buyer & the Buyer's customers in exercising any right or remedy hereunder shall operate as a waiver of that right or remedy.

17. **QUALITY SYSTEM REQUIREMENTS:** **As appropriate**, the supplier shall implement and maintain a Quality Management System (QMS) that is in compliance with AS 9003, AS 9100 Rev D, ISO 9001, or an

equivalent registered system. Suppliers shall forward a copy of their Quality Management System certifications to their XACTIV buyer. Certifications must clearly and accurately contain the name, address, city, and state of the business under registration. Any changes to the certification such as a change of the Certification / Registration Body, update, withdrawal, or disapproval must also be forwarded to the XACTIV buyer.

XACTIV may recognize second or third-party certifications issued by an accredited Certification / Registration Body provided that the scope of the audit performed correlates with the type of product/ service being provided to XACTIV. XACTIV reserves the right to perform additional assessments if deemed necessary.

Initial and subsequent periodic review of supplier's quality system may be performed by XACTIV. Objective evidence of supplier's compliance, either by submittal of requested evidence, or evidence of a third-party accreditation, may be acceptable for the purpose of re-survey, but will not preclude the use of on-site evaluations or other review methods.

A change in supplier name, ownership, facility relocation, or loss of third-party certification or adverse actions taken by the government will subject the supplier's Quality System to reevaluation by XACTIV. The supplier shall notify the XACTIV buyer of any of these aforementioned changes in writing, and forward a copy of the updated registration certificate to their XACTIV buyer.

The supplier shall provide notice to their XACTIV buyer of any major changes in the key personnel, organizational structure or manufacturing processes affecting quality and/or any major findings uncovered during their registrar's periodic audits within seven (7) business days. Corrective and Preventive actions taken in response to those major finding shall also be provided to your XACTIV buyer.

18. **NONCONFORMING MATERIAL CONTROL:** Nonconforming material must be identified and documented, segregated or bonded, pending disposition when found, to prevent its unintended release or use, and evaluated to determine the actions necessary to contain its effect on other processes or products.

19. **QUALITY RECORDS:** The supplier shall maintain a documented procedure for record creation, change (handwritten or other), completion and control of Quality records in accordance with the applicable Quality System standard (i.e. – ISO 9001, AS9100). Any change to paper records should follow industry standards of a strike through of the incorrect information, adding the correct information, initials of the person making the change and the date.

The records shall be retained for a period of not less than seven (7) years from completion of purchase order. The supplier must impose this requirement on their sub tiers. Unless otherwise directed by XACTIV, records are to be maintained utilizing the supplier's documented procedure and provided without cost to XACTIV upon request.

Records shall include, but not be limited to, the following:

- Evidence of inspection to assure adherence to applicable drawings or specifications and revisions
- First Article Inspection Report
- Test Reports
- Periodic inspection and control of inspection media
- Records to indicate control of Special Tooling and Special Test Equipment
- Test data records of all qualification and acceptance test performed
- Certification of personnel as required by specification and/or contract
- Raw Material and Process certifications
- Material Review Reports
- Or any other record in the realization, verification or validation processes

20. SHIPPING DOCUMENTATION REQUIREMENTS:

a. Packing Slip

Supplier shall provide a packing sheet or attachments for each separate shipment with at least the Supplier's company name and address, Purchase Order number, line item(s) and part numbers.

b. Certificate of Analysis and Certificate of Conformance

All suppliers shall provide a Certificate of Analysis (C of A) or Certificate Conformance (C of C) assuring that all work performed in connection with the purchase order conforms to requirements therein. The C of A and C of C may be a separate document or included on the packing sheet.

When certification is made on the packing sheet it shall have the Printed/ Typed name of the supplier's authorized representative certifying the shipment, their title, and signature or stamp and date.

When a C of A and C of C is used for certification, it shall have all the relevant information regarding the parts being certified, such as purchase order, line item number, part number, quantity of parts covered, reference to the standard (and revision) followed to perform the service and Supplier's unique production job/lot/batch /serial number that the products/services were performed under (if applicable) or it shall contain a reference to the packing sheet (list) number and have the Printed/ Typed name of the supplier's authorized representative certifying the shipment, their title, and signature or stamp and date.

The C of A and C of C must reference the standard (and revision) followed to produce the product or perform the service.

21. SUPPLIERS OF AGE-SENSITIVE MATERIALS: Supplier shall provide original manufacturing/cure date, and lot number(s), and the shelf life expiration date (if indefinite or unlimited, so state). The supplier shall physically identify the shelf life expiration date on the deliverable product or the unit packaging

according to the applicable standard. Supplier shall not ship any products that have less than 85% of their shelf life at the time of shipment.

In addition, forward any special storage/handling instructions. Supplier is responsible to determine if acceptance test report submittal is required in accordance with applicable material specification.

22. CORRECTIVE & PREVENATIVE ACTION: The supplier shall respond to all requests for corrective action on or before the requested response due date. The supplier shall maintain a documented system for determining root causes of documented defects and obtaining corrective action and preventive action both internally and from its suppliers. The supplier is accountable for effectiveness of corrective and preventive actions taken.

23. FOREIGN OBJECT DEBRIS/DAMAGE (FOD): **As appropriate**, the supplier shall develop, implement and maintain a Foreign Object Debris/ Damage (FOD) process that meets the intent of NAS 412, Foreign Object Damage/ Foreign Object Debris (FOD) Prevention, utilizing the guidance provided to establish an effective FOD prevention program for their particular product or program.

Supplier shall maintain good housekeeping to preclude introduction of or damage to any product/material caused by a foreign object(s) into any deliverable item Supplier shall employ appropriate practices to assure timely removal of residue/debris generated during manufacturing operations or tasks.

Supplier shall determine if sensitive areas that have a high probability for introduction of foreign objects debris should have special emphasis controls in place for the manufacturing environment. Tool and Hardware accountability methods shall be established to ensure positive control and accountability, as applicable.

FOD incidences should be investigated to determine containment actions, root cause and corrective actions to preclude future recurrence. Employee training and performance measurements should be utilized for increased awareness and continual improvement.

24. PART MARKING REQUIREMENTS: Supplier shall mark all deliverable products as required by the purchase order, engineering drawing and manufacturing planning. Unless otherwise stated in the engineering requirements, the Supplier shall apply the date of manufacture, date code(s) or other control identifier number (see examples below) to all deliverable hardware. Information must be applied adjacent to the hardware's identification markings and must be traceable to supplier's build documentation. Hardware produced in lots, batches, groups, etc., shall have traceable control information applied. When size of hardware, or supplier's automated stamping process, does not permit data application to individual hardware (such as standard parts), the information shall be similarly placed on bags, tags, or labels as applicable.

Examples of traceable information may include, but are not limited to:

- Date of Manufacture
- Serial Number
- Lot Number
- Control Number
- Heat Lot Number
- Final Inspection Date
- Batch Number
- Casting Number
- Work Order Number

25. COUNTERFEIT PREVENTION: As appropriate, the supplier shall have a counterfeit detection process that meets SAE standard AS5553, Counterfeit Electronic Parts, Avoidance, Detection, Mitigation, and Disposition and/or SAE Standard AS6174, Counterfeit Materiel: Assuring Acquisition of Authentic and Conforming Materiel utilizing the appropriate Appendices and Aerospace Recommended Practice (ARP) as guidance, as appropriate to the specific commodity types.

All component parts delivered and/or used in the manufacture of deliverable products shall be from the Original Component Manufacturer (OCM), Original Equipment Manufacturer (OEM) or franchised distributors or authorized Aftermarket Manufacturer (AM), or suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized suppliers (one-tier removed supplier).

Raw Material may be purchased through independent distribution as long as evidence of supply chain traceability (chain of custody) back to the mill is available. The supplier shall maintain the original mill certification and any secondary independent test laboratory certification(s) if any additional process was done after original mill certification.

Franchised distributors must be contractually franchised at the time of quote, PO acceptance, and delivery.

Parts shall not be used or reclaimed and misrepresented as new.

26. ENVIRONMENTAL HEALTH AND SAFETY – Supplier will comply with all federal, state, local and government agency environmental, health and safety laws. Supplier shall ensure that its employees, agents & subcontractors understand and comply with all applicable policies, procedures & programs.

27. ETHICAL BUSINESS PRINCIPLES - Supplier acknowledges and agrees that our Buyer requires that Supplier maintain a high standard of ethical conduct in all its dealings with the Buyer. Xactiv Inc policy prohibits all employees from accepting gratuities, gifts, entertainment or other favors, as well as from engaging in any activities which create the perception of a conflict of interest, from any current or prospective Supplier. Supplier is encouraged to implement their own written code of conduct and to flow down their principles to the entities that furnish them with goods and services. Xactiv Inc expects its Supplier to maintain effective programs to encourage their employees to make ethical, value-driven choices in their business dealings.