

XACTIV TERMS & CONDITIONS OF SALE

1. Terms and Conditions Applicable. Purchaser has offered to purchase from XACTIV ("XACTIV") the Goods, to include products and/or services, described on the face of the order confirmation.

- A. Products: "Products" shall mean any products, designs, services or deliverables identified on (a) any of XACTIV's proposals, quotations, or order acknowledgements, (b) current applicable price lists, or (c) any of XACTIV's invoices.
- B. Orders: Purchaser shall purchase Products by issuing a written purchase order signed by an authorized representative, indicating specific Products, quantity, price, total purchase price, shipping instructions, acceptance test procedures, requested delivery dates, bill-to and ship-to addresses, tax exempt certificates, if applicable, and any other special instructions. All orders are subject to acceptance and written acknowledgement by XACTIV.

XACTIV's acceptance of the offer is expressly conditioned upon Purchaser's assent to the terms and conditions set forth herein. These terms and conditions shall apply to the exclusion of all other items and conditions including any terms and conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document. No order placed by the Purchaser shall be deemed to be accepted by XACTIV until a written acknowledgement of the order is issued by XACTIV. Purchaser's failure to make written objection within ten (10) calendar days from receipt hereof, or from its acceptance of the shipment of the Products, or from the performance of the services whichever happens first, shall constitute its acceptance of these terms and conditions.

2. Prices, Taxes, and Payment Terms.

- A. Purchaser shall pay the purchase price set forth on the face of the purchase order including appropriate nominal handling charges. Prices are FCA XACTIV's shipping location (Incoterms 2010).
- B. Any and all taxes or fees imposed by any federal, state, municipal, or other governmental authority applicable to the Deliverables (products), together with any freight, insurance, duties, tariffs, and brokerage charges, shall be added to the price and paid by Purchaser, except where Purchaser shall have provided a proper certificate of exemption therefrom. Purchaser shall be responsible for the payment of such taxes and fees even if not added to the invoice price.
- C. Unless otherwise agreed to by XACTIV, any Products ordered shall be paid for within thirty (30) days from the date of shipment from XACTIV. XACTIV reserves the right to require alternative payment terms including letter of credit or payment in advance. All prices and charges shall be paid in US Dollars.
- D. XACTIV reserves the right to charge interest at the rate of two percent (2%) per month, compounded monthly, for delinquent payments.

- E. XACTIV reserves the right at any time to alter or suspend credit or to change any credit terms when, in its sole discretion, the financial condition of Purchaser so warrants. In any such case, XACTIV may require cash payment, irrevocable letter of credit, or additional security from Purchaser before further production or shipment, may accelerate the date of any payment, and may suspend production, withhold any shipment, or cancel any further production in addition to any other rights or remedies it may have pursuant to applicable law and the terms of this agreement. In the event of the bankruptcy or insolvency of Purchaser or in the event any proceeding is brought by or against Purchaser under the bankruptcy or insolvency laws, XACTIV may be entitled to cancel any order then outstanding, without liability whatsoever, and shall receive reimbursement for its cancellation charges as per Section 4 hereof.

3. Shipment, Risk of Loss.

- A. XACTIV will communicate the anticipated shipping schedule to the Purchaser after it receives all items and information from the client, as necessary for the design, manufacture, and/or testing of the Products. All shipping dates are approximate; XACTIV does not guarantee the date of shipment and failure to deliver on such communicated dates shall not constitute a breach of this agreement by XACTIV. These dates shall be individually referred to as “an anticipated schedule shipment date.”
- B. Requested changes to delivery dates as specified on the order confirmation must be submitted in writing to XACTIV. XACTIV will use commercially reasonable efforts to meet the requested schedule change(s) and will acknowledge any accepted revisions in writing within ten (10) days of receipt of the schedule change request.
- C. In the event that a method of shipment other than set forth in Section 2(A) hereof is specified, the price shall be adjusted to reflect any increase or decrease to the extent that the cost of shipment and other expenses is or will be included therein.
- D. Title and risk of loss shall pass to Purchaser as soon as the Products have been delivered to the carrier for shipment to Purchaser, FCA as per INCOTERMS 2010, unless otherwise specified at the time of order. Passage of title and/or risk of loss shall not be affected by delivery terms, shipping instructions, or storage on Purchaser’s behalf by XACTIV at its facilities. XACTIV or Purchaser may elect to obtain insurance covering the Products during shipping. All requests for shipping insurance must be made in writing at the time of order or order acceptance, and the Purchaser shall bear all costs associated with shipping insurance.
- E. XACTIV reserves the right to make delivery of completed Products in installments. All such installments shall be separately invoiced and paid for when due without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of its obligation to accept shipment of the remaining installments.

F. Claims for shortages or incorrect shipment must be made in writing by the Purchaser within ten (10) days after receipt by Purchaser of the particular shipment of Products. Purchaser shall be responsible for all shipping charges.

G. XACTIV will select the shipping carrier, unless specified by the Purchaser at the time of order.

4. Cancellations and Requests for Changes in Delivery Schedules.

A. Written notice of cancellation of any Products scheduled for shipment must be received by XACTIV at least sixty (60) days prior to such scheduled shipment date, and as early as possible for Products for which a scheduled shipment release date has not yet been provided. Purchaser must pay XACTIV the contracted price for all Products completed prior to such cancellation notice (finished goods) and the per-cent (%) completed of any "work-in-process" (WIP) multiplied by the sales price for those Products, unless otherwise specified. Purchaser shall be responsible for all costs and cancellation charges incurred by XACTIV for materials, components, and subcontracted items that XACTIV purchased or ordered prior to the cancellation date that were necessary to complete the cancelled orders and at XACTIV's sole discretion a reasonable quantity of materials overage or yield factor, and the cost of any non-cancellable long lead materials and components, that were deemed by XACTIV to be necessary to support Purchaser's shipment forecasts, plus a fee of twenty percent (20%) of these costs. Blanket orders terminated prior to fulfillment of the order shall be invoiced at the quantity discount for the actual quantity delivered. In cases where the Purchaser received volume discounts, XACTIV may also, at its sole discretion, cancel any discounts granted and charge in full for Products previously supplied to the Buyer. Purchaser is entitled to receive all completed Products for which cancellation charges are paid in full.

B. Unless explicitly approved by XACTIV, Purchaser-requested changes to the delivery schedule are not permitted for Products scheduled to be delivered within sixty (60) days of Purchaser's written request, though XACTIV may, in its sole discretion, agree to accommodate such requests. With respect to purchase orders that include multiple scheduled delivery dates, the initial three (3) months of scheduled deliveries must be committed to, i.e. released, at the time of order and are not subject to change. Subsequent shipment releases may require minimum release quantities. All changes are subject to acceptance by XACTIV and may be subject to purchase price adjustments as determined by XACTIV in its sole discretion. Should XACTIV incur additional costs because of the inability of Purchaser to accept delivery of the Products, Purchaser promptly upon demand shall reimburse such additional costs to XACTIV.

C. Unless approved by XACTIV in writing, Products previously rescheduled for shipment shall not be unscheduled again or reclassified as unreleased. All Products must be released by the Purchaser to allow shipment by the contract's end date. Those Products not released as described will be considered cancelled and the terms of this Section shall apply.

5. Inspection and Rejection. Prior to use, Purchaser will fully inspect all Products received. In the event that such inspection and testing reveals deficiency, or non-conformity, Purchaser shall notify XACTIV as

per Section 7, Warranty. If Purchaser fails to make any claim within such time, or uses the Products, such failure shall constitute irrevocable acceptance of the Products. In all cases, no Products shall be returned to XACTIV by Purchaser unless XACTIV authorizes such return.

6. Warranty of Products Shipped.

- A. XACTIV warrants its Products to be free from defects in materials and workmanship and to conform to XACTIV's standards, or agreed upon specifications, whichever are applicable for such Goods, for a period of one hundred and eighty (180) days from the invoice date, provided that Purchaser notifies XACTIV of any such defects within thirty (30) days of first evidence of such defect. XACTIV obligations under this warranty are limited, at XACTIV's sole discretion, to the replacement or reworking of the defective Products, or the crediting or return of that portion of the purchase price applicable to the defective Products. The determination of whether Products meet XACTIV's standards or otherwise agreed upon specifications is at XACTIV's sole discretion.
- B. This warranty is not applicable to Products damaged by, or failures due to: abuse; misuse; alteration; accident; negligence (other than that of XACTIV); improper installation; storage or maintenance; use of third party supplied accessories or devices unless pre-approved by XACTIV; operation or storage beyond specified ranges including but not limited to temperature, moisture, dirt, shock, vibration, electrostatic discharge or corrosion; lack of maintenance as specified in user manuals, or repair or alteration by anyone other than an authorized representative of XACTIV. XACTIV is not responsible for expenses incurred by Purchaser to correct or repair any alleged defect unless pre-approved by XACTIV in writing. This writing does not apply to, and XACTIV assumes no liability for, the failure of any Products to meet Purchaser provided specifications where XACTIV previously indicated its Products may not meet Purchaser's specifications, nor does it apply to consumables and wear surfaces (part-touch tooling, etc.).
- C. All Products returned for warranty service must be returned in the original packaging and protected by an appropriate shipment carton. Purchaser is responsible for risk of loss and all costs associated with the return to XACTIV of the Products. Purchaser is also responsible for any return shipping charges and for the price of labor associated with the diagnosis and retesting of Products found to be conforming. Products found to be non-conforming (valid warranty claims) will be returned to Purchaser at XACTIV's expense.
- D. THE ABOVE WARRANTIES ARE GIVEN IN LIEU OF ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Liabilities. The sole and exclusive remedies of Purchaser shall be those specifically set forth in the Warranty section hereof. XACTIV's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations hereunder shall not in the aggregate exceed the

purchase price of the Products involved. UNDER NO CIRCUMSTANCES SHALL XACTIV BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR LOSS OF BUSINESS OR PROFIT OR ANY OTHER ECONOMIC LOSS, OR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES AS A RESULT OF PRODUCT PERFORMANCE, DELIVERY PERFORMANCE OR FAILURE TO PROVIDE NOTICE OF DELIVERY DELAYS. THE FOREGOING CONSTITUTES THE SOLE LIABILITY OF XACTIV AND THE EXCLUSIVE REMEDY OF PURCHASER WHETHER OR NOT BASED UPON NEGLIGENCE, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, TORT, OR ANY OTHER COURSE OF ACTION.

8. Indemnification. Purchaser acknowledges that XACTIV has no control over, and is not responsible for, the manner in which the Products will be used or otherwise dealt with by Purchaser. Purchaser shall indemnify and hold XACTIV and XACTIV's affiliates, suppliers and customers harmless from and against, and agree to assume all responsibility for, any and all actions, claims, or demands arising out of or in any way connected with, and any and all amounts which XACTIV and/or Purchaser becomes obligated to pay, caused by or resulting directly or indirectly from the use or operation of the Products, unless such Claims are directly attributable to the sole fault or negligence of XACTIV. This obligation of protection shall extend to all costs and expenses reasonably incurred by XACTIV and its personnel in responding to court ordered requests, including the time spent by XACTIV personnel at XACTIV standard hourly consulting rates, and the costs of independent counsel retained by XACTIV in connection with any litigation or other proceeding between Customer and one or more third parties.

9. Security Interest. Until full payment of the purchase price, XACTIV shall retain a security interest in any tangible Products, and may, at its option and without further agreement or signature by Purchaser, file evidence of such security interest pursuant to the Uniform Commercial Code. So long as XACTIV has a security interest, Purchaser shall keep the Products in good condition and free from any other liens or encumbrances.

10. Nonpayment.

- A. XACTIV shall have the right to immediately suspend performance by it or otherwise terminate all or any part of this order in the event Purchaser fails to pay any amount to XACTIV when due.
- B. In the event of nonpayment, XACTIV shall have and may exercise all rights and remedies under the Uniform Commercial Code. Purchaser shall also be liable to XACTIV for all costs of collection, including reasonable attorney's fees and costs, incurred by XACTIV upon the default by Purchaser. XACTIV reserves ownership of Goods until such a time as they are paid in full.

11. Arbitration. Any controversy, claim, or dispute arising out of or relating to this order and not resolved by agreement of the parties shall be resolved in Arbitration in a jurisdiction in reasonable proximity to the XACTIV point of origin for the Goods. The decision and award of the arbitrator(s) shall be final and binding and may be entered in any court having jurisdiction thereof. The parties will pay their respective attorneys' fees and equally share all other costs and expenses of the arbitration proceedings.

12. Additional Terms and Conditions.

- A. Notices. Any notices permitted or required to be given hereunder shall be in writing and shall be sent by certified or registered mail, return receipt requested, postage prepaid, email, or by facsimile, to the address on the face hereof, or at such address or addresses as either party shall designate by like notice to the other.
- B. Force Majeure. XACTIV shall not be liable for any loss or damage resulting from any delay in or inability to complete the design, manufacture, delivery, or installation of the Goods, or performance of the services by reason of any cause not reasonably within the control of XACTIV including, but not limited to, the neglect, act or omission of Purchaser or third parties, acts of God, earthquakes, transportation difficulties, riots, war, fire, explosion, epidemics, labor difficulties, material shortages, or governmental act or authority, which prevent XACTIV from performing in the normal and usual course of business. In the event of the occurrence of any such contingency, XACTIV may, in its discretion, postpone the delivery dates herein for a time equal to the time lost by reason of the delay or such other period of time as is reasonable under all the circumstances, or make partial delivery or cancel all or any portion of this and any previous contracts with Purchaser.
- C. Waiver. Waiver by XACTIV of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and the failure of XACTIV to exercise any right arising from any default of Purchaser hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. No waiver by XACTIV shall be effective unless in writing and signed by a duly authorized representative of XACTIV.
- D. Severability. If any of the provisions or portions hereof is invalid or unenforceable, they are to that extent to be deemed omitted, and the remainder shall continue in full force and effect to the fullest extent permitted by law.
- E. Assignment. Purchaser may not assign this order, in whole or in part, without the prior written consent of XACTIV.
- F. Governing Law. This order shall be governed by and construed under the laws of New York State
- G. Amendments. Amendments to the printed terms and conditions of this order must be in writing and signed by XACTIV and Purchaser.
- H. Entire Order. Purchaser acknowledges that it agrees to be bound by these Terms and Conditions of Sale and agrees that they, together with XACTIV's quotation or proposal and the XACTIV purchase order acknowledgement are the complete and exclusive statement of the agreement between the parties relating to the subject matter of this order. No modification, limitation, waiver, or discharge of this Agreement or any of its terms shall bind XACTIV unless approved and documented by XACTIV's authorized representative.

- I. Export Regulations. Purchaser shall obtain all licenses, permits and approvals required by any government. Purchaser shall not transmit, export or re-export, directly or indirectly, separately or as part of any system, the Products or any technical data received from XACTIV without first obtaining any license required by the applicable government, including, without limitation, the United States Government.
- J. Foreign Corrupt Practices Act. Purchaser agrees to comply with all aspects of the U.S. Foreign Corrupt Practices Act.
- K. Rights in Intellectual Property. It is understood and agreed that in the course of providing engineering, testing, and consulting services to the Customer, XACTIV may utilize its existing know-how, practices, and techniques, and/or may become aware of and/or develop enhancements and refinements to the same in connection with the work being performed by XACTIV for the Customer. Subsequently, XACTIV may utilize such prior know-how, practices, and techniques, and/or any newly acquired enhancements and refinements to the same, subject in all events that they are non-proprietary and subject to XACTIV's confidentiality obligations. If and to the extent that any XACTIV Independent Technology is incorporated or embodied in the Project to be performed hereunder, it is understood and agreed that such Independent Technology shall not be assigned to or otherwise become the property of the Customer, but shall be and remain the sole property of XACTIV; provided, however, that XACTIV hereby grants to Customer a perpetual, royalty-free, non-exclusive right and license to use such XACTIV Independent Technology, subject in all events to the obligation of Customer to preserve the confidentiality thereof.
- L. During the continuation of this Agreement, and for a period of 24 months thereafter, neither party shall, directly or indirectly, for its own account or for that of any other, hire, entice away, or attempt to entice away, any of the employees, contractors, or agents of the other with whom such party became acquainted during the continuation hereof, without first getting permission from the President or other authorized senior executive of the other entity.