

USA-XANTREX TECHNOLOGY INC.

Customer – Purchase Order Terms & Conditions

1. **Sale.** Xantrex Technology Inc., a Washington corporation ("Xantrex"), hereby agrees to sell to the party (the "Buyer") described as the buyer in an order to purchase products ("Purchase Order") and the Buyer agrees to purchase from Xantrex products (the "Products") described in such Purchase Order on the terms and conditions set forth below.

2. **Purchase Price and Payments.** The Buyer will pay Xantrex the price (the "Purchase Price") for Products specified in the Purchase Order within 30 days after the invoice date. All payments under this Agreement shall be made to Xantrex in U.S. dollars by wire transfer or check, without any set-off or counterclaim, at the bank or at the address specified on Xantrex's invoice.

3. **Past Due Amounts.** If the Buyer fails to pay the Purchase Price or other amounts owing under this Agreement on the due date, the Buyer will pay interest on the amount due at the rate of 18% per annum, compounded on the last day of each and every month; provided that notwithstanding the foregoing, the rate of interest payable under this Agreement will not be higher than the highest rate of interest permitted by applicable law. The Buyer will also pay any collection agency fees that Xantrex incurs as a result of past due amounts.

4. **Taxes.** The Buyer will be liable for, and will indemnify and hold harmless Xantrex from and against, all duties, tariffs, levies, taxes (including without limitation sales, use and withholding taxes), and other public charges arising in relation to the sale or delivery of the Products.

5. **Delivery.** Unless otherwise agreed in writing, Xantrex will deliver the Products FCA, Incoterms 2000 (as modified by this Agreement) custody of the Buyer's carrier at Xantrex's place of manufacture for the Product. Risk of loss or damage, and title, to the Products will pass to the Buyer upon such delivery. Any time or date for delivery specified in a Purchase Order or acknowledgement of such order is an estimate only, and Xantrex will not be liable for the consequences of any delay.

6. **Inspection and Acceptance.** The Buyer shall, not later than 5 business days following receipt of any of the Products, notify Xantrex of any discrepancies in the quantity or quality of those Products. If the Buyer fails to provide such notice to Xantrex within such time period, without prejudice to §10, those Products shall be conclusively deemed to have been received and accepted by the Buyer without defects.

7. **Suspension of Delivery and Force Majeure.** Xantrex shall not be in breach of any of its obligations under this Agreement where the failure to perform or delay in performance is due, wholly or in part, directly or indirectly, upon the occurrence of any Act of God, acts of governmental bodies or agencies foreign or domestic, sabotage, fire, floods, earthquakes, explosions or other catastrophes, accidents, freight embargos, delays occasioned by carriers, delays of a supplier of Xantrex, strikes, lockouts, labor unrest, labor shortages, manufacturing breakdowns or any other event beyond the control of Xantrex.

8. **Buyer's Specifications.** Where the Buyer is to provide specifications, the Buyer will provide such specifications in reasonable time to enable Xantrex to complete delivery within the period specified. Xantrex reserves the right to make modifications to the design, form and materials of the Products to an extent which the Buyer can reasonably be expected to accept and provided that this does not result in a fundamental transformation of the Products. Claims arising from or due to specifications, drawings or designs supplied by the Buyer, including, without limitation, intellectual property infringement claims, shall be the sole responsibility, and will be dealt with at the sole expense, of the Buyer, and the Buyer shall indemnify and hold harmless Xantrex from and against all actions, causes of action, damages, losses, injury, costs, expenses and liabilities whatsoever (collectively, the "Claims and Liabilities") arising out of or by virtue of any such claim.

9. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED BY XANTREX IN WRITING, XANTREX DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY AS TO QUALITY, MERCHANTABILITY OR FITNESS FOR PURPOSE, CONCERNING ANY OF THE PRODUCTS, OR THEIR DESIGN, MATERIALS, WORKMANSHIP, LIFE, PERFORMANCE OR SUITABILITY, OR THE INFORMATION, SPECIFICATIONS OR MANUALS PROVIDED WITH THEM.

10. **Warranty and Exclusion.** If Xantrex has provided a written warranty covering the Products, and if the Buyer discovers and notifies Xantrex in writing of any defect in material or workmanship within the applicable warranty period, then Xantrex may, at its option: issue a credit note for the defective Product; or repair or replace the Product; or provide the Buyer with replacement parts for the Product. The Buyer will, at its expense, return the defective Product or parts thereof to Xantrex in accordance with the return procedure specified in Xantrex's applicable products or user manual. Xantrex will, at its expense, deliver the repaired or replaced Product or parts to the Buyer. Any warranty of Xantrex will not apply if the Buyer is in default under this Agreement or where the Product or any part thereof: (a) is damaged by misuse, accident, negligence or failure to maintain the same as specified or required by Xantrex; (b) is damaged by modifications, alterations or attachments thereto which are not authorized by Xantrex; (c) is installed or operated contrary to the instructions of Xantrex; (d) is opened, modified or disassembled in any way without Xantrex's consent; or (e) is used in combination with items, articles or materials not authorized by Xantrex. The Buyer may not assert any claim that the Products are not in conformity with any warranty until the Buyer has made all payments to Xantrex provided for in this Agreement.

11. **Limitation and Release.** IN CONNECTION WITH THIS AGREEMENT AND THE PRODUCTS, XANTREX WILL BE LIABLE TO THE BUYER ONLY FOR DIRECT DAMAGES SUFFERED BY THE BUYER AND ONLY UP TO A MAXIMUM AMOUNT EQUAL TO THE PURCHASE PRICE, AND THE BUYER HEREBY RELEASES XANTREX FROM ALL OTHER CLAIMS AND LIABILITIES OR GREATER AMOUNT INCLUDING, WITHOUT LIMITATION, (a) ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST REVENUES, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSSES OF ANY KIND, EVEN IF XANTREX HAS BEEN ADVISED, OR HAD REASON TO KNOW, OF THE POSSIBILITY OF SUCH DAMAGE, (b) ANY LIABILITY ARISING IN TORT, WHETHER OR NOT ARISING OUT OF XANTREX'S NEGLIGENCE, AND ALL LOSSES OR DAMAGES TO ANY PROPERTY OR FOR ANY PERSONAL INJURY OR ECONOMIC LOSS OR DAMAGE CAUSED BY THE CONNECTION OF A PRODUCT TO ANY OTHER DEVICE OR SYSTEM, AND (c) ANY DAMAGE OR INJURY ARISING FROM, OR AS A RESULT OF, MISUSE, ABUSE OR INCORRECT INSTALLATION, INTEGRATION OR OPERATION OF THE PRODUCTS BY PERSONS NOT AUTHORIZED BY XANTREX.

12. **No Variations; Buyer Forms.** If the Buyer issues any purchase order or similar instrument in respect of the Products containing terms and conditions different from the terms and conditions of this Agreement, and Xantrex does not specifically acknowledge its acceptance of such different terms and conditions in writing, the different terms and conditions of the Buyer shall be deemed to be of no force and effect and the Buyer shall be deemed to have accepted the terms and conditions of this Agreement.

13. **Termination.** If:

- (a) the Buyer breaches this Agreement or any other of its obligations to Xantrex, or
- (b) any bankruptcy, insolvency, liquidation or reorganization proceedings are commenced with respect to the Buyer, or the Buyer is adjudged a bankrupt or becomes insolvent, or
- (c) the Buyer makes an assignment for the benefit of, or proposes an arrangement with, its creditors, or a receiver, a receiver and a manager or a like person is appointed in respect of all or any part of its assets,

Xantrex will have the right to terminate (without prejudice to any accrued claims or rights) this Agreement and each other contract between the parties upon giving written notice to the Buyer at its last known address or facsimile number.

14. **Amendment and Waiver.** No amendment, supplement, consent or waiver, express or implied, to or of any provision of this Agreement will be effective unless in writing signed by the parties hereto and then only in the specific instance and for the specific purpose given.

15. **Assignment.** The Buyer will not assign or transfer this Agreement or any of its rights hereunder without Xantrex's prior written consent, which consent may be withheld at Xantrex's sole discretion.

16. **Law.** This 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.

17. **Arbitration.** Any controversy or claim arising out of or relating to this 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.

18. **Severability.** If any provision of this Agreement is found by any court or arbitrator to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected thereby.

19. **Entire Agreement.** Unless a separate written agreement is entered into between Xantrex and Buyer either modifying these terms and conditions or setting forth which terms will control, this Agreement constitutes the entire contract between the parties concerning the subject matter of this Agreement.