

XP POWER LLC (the "Seller")

TERMS AND CONDITIONS OF SALE

All quotations and sales by XP Power LLC or its affiliates ("XP") to the customer identified on the order form, invoice or sales acknowledgement form to which these Terms and Conditions of Sale are attached (the "Customer") are subject to these terms and conditions and the terms set forth on the front of this document or to which this document is attached.

1) Orders; Payment; Shipment

No order shall be binding upon XP until the order has been accepted by XP in a formal order acknowledgment. Acknowledgment of receipt shall not be deemed acceptance of the order. Customer creditworthiness will be reviewed prior to acceptance. All orders must be consistent with established lead times. Terms of payment are net thirty (30) days from invoice date; prices are EXW (Incoterms 2000) XP's shipping facility; and prices do not include any taxes, freight, handling, duty, tariff or other similar charges that will also be charged to Customer. Freight charges may be constructed based on standard carrier tariffs and may not reflect actual transportation costs. XP reserves the right to modify terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of Customer's creditworthiness or should Customer fail to fulfill any obligation when due.

2) Title and Risk of Loss; Storage Charges

In the absence of prior agreement as to shipping, XP will select a carrier. XP's responsibility for any loss or damage ends when products are delivered to the carrier for delivery to Customer or to Customer's agent. Customer will pay for storage charges if XP holds products at Customer's request pending instructions or rescheduled delivery. All product purchases shall be deemed irrevocably accepted upon delivery. Title will be transferred to Customer immediately upon delivery (EX-Works term), provided that at no time will title to any software or firmware pass to Customer.

3) Cancellations and Charges

No order may be cancelled, rescheduled or reconfigured without XP's prior written authorizations and in such event, Customer will be liable to XP for any additional costs and expenses incurred by XP.

4) Price Changes

Prices are subject to change by XP upon Customer rescheduling or reconfiguration of orders. Prices are also subject to change in response to XP's supplier price increases, if any.

5) Limited Warranty

- a) Performance Warranty. XP warrants to Customer that for a period of thirty six (36) months with respect to standard products or twelve (months) for V-Brand and non-standard products from the date of shipment, the XP products will be free from defects in materials and workmanship. The Customer has a period of thirty (30) days from the date of shipment to inform XP if the XP products as delivered do not conform in all material respects to the product specifications in effect at the time of shipment. Customer will notify XP in writing of any material nonconformance, including but not

limited to shipment of wrong part number, short or over shipment or damaged out of box immediately upon receipt. XP reserves the right to examine any allegedly non-conforming product and perform a failure analysis to determine if the alleged non-conformance is a result of defective materials or workmanship (in which case the remedies set forth in this Section 5 shall apply), or does not exist or was caused by improper use or installation or damage in transit or while in the control of Customer (in which case Customer shall have no right to any remedies hereunder). If XP determines that the non-conformance was due to defective materials or workmanship, XP will issue a return authorization ("RMA") for the nonconforming products, and Customer will return the nonconforming unit(s) to XP's designated repair facility in accordance with the instructions set forth in the RMA process. XP shall, at its option, either

- i) repair or replace nonconforming products and return the conforming products to Customer, or
- ii) credit Customer for any non-conforming products if repair or replacement is not feasible.

Any such repair or replacement provided to Customer will not extend the original warranty period for the products in question. Products which are out of warranty and repaired by XP shall have a ninety (90) day warranty from the date of shipment on the workmanship performed. The foregoing sets forth XP's sole and exclusive obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty. Customer shall bear all risk of loss or damage to returned goods while in transit. In the event no defect or a breach of warranty is discovered by XP upon receipt of any returned item, the item will be returned to Customer at Customer's expense and Customer will reimburse XP for the transportation charges, labor, and associated charges incurred in testing the allegedly defective item.

- b) Disclaimer. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 5(a) ABOVE, XP EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6) Delays in Performance

XP will not be liable for any failure or delay in its performance or in the delivery or shipment of products, or for any damages suffered by Customer by reason of such failure or delay, when such failure or delay is caused by, or arises in connection with, any force majeure events, any fire, flood, accident, riot, earthquake, severe weather, war, act of terror, governmental interference or embargo, strike, shortage of labor, fuel, power, materials or supplies, delay in delivery by XP's suppliers, or any other cause or causes beyond XP's reasonable control. XP may choose to withhold shipment due to Customer's creditworthiness, lack of payment, or exceeding their credit limit and XP will not be liable for failure or delay in its performance or in the delivery or shipment of products. XP reserves the right to cancel without liability any order, the shipment of which is or may be delayed for more than thirty (30) days by reason of any such cause. XP reserves the right to allocate products in its sole discretion among customers or potential customers, or defer or delay the shipment of any product, which is in short supply due to any such cause.

7) Governing Law

The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended; rather, these rights and obligations shall be governed in all respects by the laws of the State of California exclusively, as such laws apply to contracts between California residents performed entirely within California.

8) Order of Precedence

All quotations and sales are made only upon these terms and conditions and those on the front of this document or the ordering or acknowledgement document to which these terms and conditions are attached. These documents and not any purchase order or other Customer document (which if construed to be an offer is hereby rejected), will be deemed an offer or counteroffer and is a rejection of any other terms or conditions. Customer, by accepting any products, making any payments, or ordering any products having previously received these terms and conditions, will be deemed to have assented to these terms and conditions, notwithstanding any terms contained in any prior or later communication from Customer and whether XP will specifically or expressly object to any of Customer's terms. XP's failure to object to any document, communication or act of Customer will not be deemed a waiver of any of these terms and conditions. A duly authorized officer of XP must specifically agree in writing to any addition or change to these terms and conditions before such changes may become binding on XP.

9) Government Contracts

If Customer's order is placed under a contract with the United States Government, XP agrees to comply with those contract provisions and regulations with which, pursuant to law, it must comply and of which Customer has, at the time of order placement, placed XP on notice. All rights in technical data and software owned or licensed by XP are hereby reserved and deemed restricted or limited. No provision of Customer's contract with the government will be binding on XP except as expressly set forth in this paragraph.

10) Unintended Applications

Unless specifically otherwise agreed in writing by XP, Customer acknowledges that products sold by XP are not intended for and will not be used in life support systems, human implantation, nuclear facilities or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify and hold XP harmless from any loss, cost or damage resulting from Customer's breach of the provisions of this paragraph.

11) Export Control and Sanctions Compliance

- a) Customer represents and warrants that it will comply with all applicable export control and sanctions laws, regulations or other restrictions of the U.S. and any other governmental authority having jurisdiction, including those of the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") and the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") (collectively, "Export Control and Sanctions Laws"). Customer will obtain any necessary export licenses, approvals or other documentation ("Approvals") prior to the export or re-export of any items or related technology pursuant to this Agreement.
- b) Customer will provide XP with copies of all Approvals upon XP's request and will not, directly or indirectly, export, re-export, transship or otherwise dispose of any items or related technology
 - i) to any individual, entity, or country prohibited by Export Control and Sanctions Laws, including the prohibition against exports:
 - (a) to, or to a national or resident of, any country or region subject to U.S. sanctions or similar restrictions (i.e., Cuba, Iran, Syria, North Korea and the Donetsk, Luhansk and Crimea regions of Ukraine);
 - (b) to any person or entity on OFAC's Specially Designated Nationals, Sectoral Sanctions Identifications List or Foreign Sanctions Evader's

- list, the BIS's Denied Persons List, Unverified List or Entity List, or other export control or sanctions lists; or
- (c) to a foreign military end user or for a foreign military purpose to Burma, China, Hong Kong, Russia, Venezuela or other countries as may be required by Export Control and Sanctions Laws, or
- ii) for any end-use prohibited by Export Control and Sanctions Laws, including nuclear, chemical or biological weapons proliferation or development of missile technology.

12) No Re-Export to Russia

- a) In addition to Section 11, and subject to exceptions that apply to “partner countries” (i.e., U.S., Japan, U.K., South Korea, Australia, Canada, New Zealand, Norway and Switzerland), the Customer shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014.
- b) The Customer shall use its best endeavours to ensure that the purpose of condition 12(a) is not frustrated by any third parties further down the commercial supply chain, including by possible resellers.
- c) The Customer shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial supply chain, including by possible resellers, that would frustrate the purpose of condition 12(a).
- d) Any violation of condition 12(a), 12(b) or 12(c) shall constitute a material breach of an essential element of this Agreement, and XP shall (without prejudice to its other rights and remedies under this Agreement or otherwise) be entitled to seek appropriate remedies, including, but not limited to: (i) termination of this Agreement; and (ii) termination of any other contract in place between the Customer and XP.
- e) The Customer shall immediately inform XP about any problems in applying conditions 12(a), 12(b) or 12(c), including any relevant activities by third parties that could frustrate the purpose of condition 12(a). The Customer shall make available to XP information concerning compliance with the obligations under conditions 12(a), 12(b) and 12(c) within two weeks of request of such information.

13) Limited Liability

IN NO EVENT SHALL XP BE LIABLE TO CUSTOMER, OR TO ANY ENTITY CLAIMING THROUGH OR UNDER CUSTOMER, FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND, HOWEVER ARISING, WHETHER IN CONNECTION WITH THE FURNISHING OF PRODUCTS, PARTS, OR SERVICE HEREUNDER, OR THE PERFORMANCE, USE OF, OR INABILITY TO USE ANY PRODUCTS, PARTS, OR SERVICE, OR OTHERWISE, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT XP HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES.

14) Software

Any software or firmware incorporated in or provided with the products is licensed, not sold to Customer. Except for the right to use the software or firmware as incorporated in the products, all rights are reserved. Customer agrees to comply with XP's requirements regarding proprietary and similar rights in and to any third party software incorporated in the products (including any requirement to enter into a separate license agreement and prohibitions against duplicating or disclosing the same, even if the seal on any “shrink wrap” item has been broken by XP).

15) Intellectual Property Rights

In all cases, intellectual property rights in and to, and all technology relating to the products supplied to Customer, including but not limited to, their design and all improvements thereto, and any accompanying software, whether such product, design, improvement, or software is made pursuant to Customer's specifications or at Customer's expense, shall be and remain the exclusive property of XP.

16) Miscellaneous

Any required notices shall be given in writing at the address of each party set forth in this quotation, or to such other address as each party may substitute by written notice to the other and shall be deemed given upon personal delivery or three days following deposit in the mail. XP's failure to or delay in exercising any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Customer's relationship to XP is that of an independent contractor, and neither party is an agent or partner of the other. If any provision of this Agreement is unenforceable, such provision will be changed to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Customer may not assign or delegate this Agreement or its rights or duties hereunder (by operation of law or otherwise) without the prior written consent of XP. Any assignment not in conformity with the foregoing will be null and void. These terms and conditions and the invoice, purchase order, or sales acknowledgement form to which it is attached constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This agreement may be amended only by a written document signed by both parties that specifically references these terms and conditions and this agreement.

22 July 2024