

TERMS AND CONDITIONS OF SALE (U.S.)

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. 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 or other similar charges that will also be charged to Customer. Freight charges may be constructed on the basis of 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 pass to Customer upon delivery, 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 supplier price increases, whereupon, Customer may cancel the undelivered portion of any affected order by delivering written notice to XP prior to the shipment thereof and within ten (10) days of its receipt of notice of the price increase.

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 ninety (90) 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 during the warranty period. 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. XP shall, at its option, either (i) repair or replace nonconforming products, at XP's cost, and return the conforming products to Customer, or (ii) credit Customer for any non-conforming products. 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 sale 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) **Maintenance.** Except for warranty repairs made pursuant to Section 5(a) above, maintenance services for products are not covered by this Agreement. If Customer desires XP to provide maintenance or assistance other than warranty repairs, Customer must contact XP and enter into a separate maintenance agreement.

(c) **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 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 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 counter-offer 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 or not 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.** Any or all products may be subject to export or resale restriction or regulation, and Customer acknowledges that it will comply with such regulations or restrictions. Any or all products may have been imported. Country of origin information is as provided to XP by its suppliers and is, where applicable, located on the products themselves or the supplier's innermost packaging thereof.

12. **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.

13. **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 with regard to 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).

14. **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 or not 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.

15. **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.