

XMA TERMS AND CONDITIONS OF PURCHASE

These Terms and Conditions ("Terms and Conditions") are incorporated by reference into each purchase order (each, a "Purchase Order" and collectively, the "Purchase Orders") issued by XMA Corporation, a New Hampshire corporation ("Company") to each vendor that is a party to any Purchase Order (each, a "Vendor")(each of Company and Vendor are hereinafter individually referred to as a "Party" and collectively as the "Parties") in connection with the purchase by Company of parts and products (the "Products"). The applicable Purchase Order and these Terms and Conditions shall exclusively govern the sale by Vendor and the purchase by Company of the Products described in such Purchase Order.

1. Product Prices.

The prices for the Products shall be established under the applicable Purchase Orders issued from Company to Vendor from time to time. Unless otherwise stated on any Purchase Order, the prices stated on such Purchase Order include all charges such as packaging, packing, customs duties imposed before delivery to the Receiving Location, and all taxes except sales, use and other such taxes imposed upon the sale or transfer of the Products. Company shall have no liability for such taxes if it has complied with statutory resale tax certificate requirements.

2. Payment Terms.

Company shall not be liable for any payments under a Purchase Order until Company has inspected the Products, received and accepted the Products at its Receiving Location, and received a correct invoice from Vendor for such Products. Upon satisfaction of all of the foregoing, Company shall issue payment based on the terms noted on the Purchase Order, within forty-five (45) days after receipt of a correct invoice from Vendor. Vendor shall accept payment from Company under any Purchase Order by ACH, wire transfer, Company check or any other reasonable method of payment designated by Company that is customary in the industry. The payment due dates shall be adjusted by Company for any Products that Company rejects as defective or as being in incorrect quantities. Company shall have the right at any time to offset any amount owing from Vendor to Company against any amount payable by Company pursuant to any Purchase Order. Credits due to rejections of any Products or discrepancies in respect of paid invoices may be deducted by Company from subsequent payments to Vendor.

3. Delivery.

- A. Vendor shall deliver all Products Delivery Duty Paid (DDP) to Company at 7 Perimeter Road, Manchester, NH 03103 or such other destination point that Company may specify to Vendor in any Purchase Order or other written communication (the "Receiving Location"). Notwithstanding the foregoing, the Parties may, from time to time agree, in accordance with the terms of any Purchase Order, that Company shall pay for the cost of shipping the Products under a Purchase Order as reflected on the Purchase Order, provided that Vendor shall otherwise remain fully responsible for delivery of any such Products DDP to the Receiving Location.
- B. Company requires 100% on-time delivery of Products from Vendor. Vendor shall deliver all Products within the time frame and at the rate of delivery specified in the applicable Purchase Order. TIME AND RATE OF DELIVERY ARE OF THE ESSENCE WITH RESPECT TO ALL PURCHASES MADE UNDER ANY PURCHASE ORDER. In addition to Vendor's right to cancel any Purchase Order as set forth below, if any delivery of Products is not received by Company by the delivery date specified in the Purchase Order, Vendor shall be responsible for all costs and expenses incurred by Company in connection with any such late delivery, including without limitation, any expediting fees required to deliver Company's products to its customers, any penalties assessed by Company's customers as a result of

such late delivery and any decrease in the pricing of Company's products to be paid by Company's customers in connection with such late delivery.

- C. Each and every shipment of Products under a Purchase Order shall be covered by a separate invoice. All invoices shall include the applicable Purchase Order number, Product number and Product unit price set forth on the applicable Purchase Order, as well as the Receiving Location and the total quantity of Products included in the shipment.
- D. Vendor shall deliver the exact quantity of Products set forth on the applicable Purchase Order. If Vendor delivers more or less than the exact quantity, Company may cancel and return all or part of the order without cost or liability. If Vendor delivers more than the exact quantity, Company may return any excess Products at Vendor's expense.
- E. Company may without cost or liability: (a) reschedule delivery of any Product upon at least twenty (20) days' written notice before the "delivery" date set forth on the applicable Purchase Order, or (b) cancel a Purchase Order, or any part of it, upon at least twenty (20) days' written notice before such "delivery" date.

4. Quality Management System.

Company's Quality Management System is AS9100 registered. Accordingly, Company requires that Vendor provide and maintain a quality system that complies with the requirements of ISO9001 or AS9100, unless otherwise directed by Company in writing. Vendor shall immediately notify Company in writing if Vendor becomes non-compliant with Company's quality system requirements (e.g., loss of third-party certification). Vendor shall inspect all Products prior to shipment to ensure that all Products meet the exact and precise specifications, quality and other requirements of Company. Company may inspect the Products at all times and places (including Vendor's location) and in any event prior to acceptance at its Receiving Location. Company may, in its sole discretion and at Vendor's expense and risk (i) require Vendor to rework any Products that do not conform to all applicable specifications; or (ii) return any such Products to Vendor for credit, refund of purchase price or replacement. If Company elects to require

Vendor to rework any such Products, Vendor shall repair or replace any nonconforming Products within ten (10) days of receipt of such nonconforming Products from Company. Vendor hereby expressly agrees to assume all costs incurred by Company in connection with any non-conforming Products or shipments including, but not limited to, any labor, material, inspection and/or shipping costs from and to Vendor. Any non-conforming Product or changes in Product or process must be approved by Company in writing before shipping.

AS9100 places requirements on Company with respect to its agreements with external service providers (including Vendor). The terms and conditions of these requirements per AS9100D 8.4.3, including additional requirements imposed by Company on Vendor are listed below:

- A. Vendor shall maintain the proper identification and revision status specifications, drawings, process requirements, testing requirements, inspection/verification instructions, and other relevant technical data.
- B. Company reserves the right of final approval for all Products, specifications, materials, parts, components, services, methods, processes and equipment, and the final release of all Products and services.
- C. Company requires that all special processes required by any Purchase Order(s) must be performed by competent, qualified personnel.
- D. Company reserves the right to designate requirements for audit, verification or validation activities that Company or its customer intend to perform at Vendor's premises, including without limitation, site surveys.
- E. Company reserves the right to approve or specify any designs, tests, processes, materials, components, inspection plans, verifications (including without limitation, production process verifications), criteria for design and development required by Company from any Vendor, including without limitation, the types of tests conducted, the methodology for conducting such tests, and the calibration of any test equipment used in any such tests.

- F. Company reserves the right to add, modify, approve or specify any special requirements, critical items, or key characteristics for any Products, services and/or processes.
- G. Company reserves the right to approve or specify the use of statistical techniques for Product acceptance and related instructions for acceptance by Company.
- H. Company reserves the right to require the need from Vendor to:
 - (i) Require that Vendor uses customer-designated or approved vendors, including process sources (e.g., special processes).
 - (ii) Notify Company of nonconforming Products or services immediately upon discovery and obtain Company's prior written approval for nonconforming Product disposition.
 - (iii) Require Vendor to show evidence of processes to prevent the use of counterfeit or substitute components and parts.
 - (iv) Notify Company of all changes in any Products, including without limitation, any processes, components, parts, materials, changes of vendors, and changes of manufacturing facility locations.
 - (v) Flow down to the supply chain the applicable requirements including customer requirements.
 - (vi) Provide test specimens for design approval, inspection/verification, investigation, site surveys and/or auditing.
 - (vii) Retain all records associated with the Purchase Orders for a minimum of seven (7) years or as required by the terms of any Purchase Order or other applicable written agreement between the Parties. Company requires the disposition of such documents to be controlled in accordance with the requirements of all applicable Quality Management System documentation.
- I. Company reserves the right of audit and access by its representatives, its customers, and any regulatory authorities to all applicable records and applicable areas of all facilities, at any level of the

supply chain involved in any Products delivered under any Purchase Order, including without limitation site surveys.

- J. Company reserves the right to require and request evidence that Vendor provides training for its personnel (and maintains training records) to ensure its personnel are aware of:
 - (i) Their contribution to Product or service conformity.
 - (ii) Their contribution to Product safety.
 - (iii) The importance of ethical behavior.
 - (iv) The requirements of XMA's [Supplier Code of Conduct](#) for all Company vendors.

5. Representation and Warranties.

Vendor expressly warrants that all Products shall be of merchantable quality, free from defects in materials and workmanship, and fit for its intended use for Company's products. Vendor further represents and warrants that (a) all Products shall conform to the precise specifications, drawings, samples, and descriptions referred to in the applicable Purchase Order; (b) Vendor has the right to convey the Products to Company; (c) the Products are free of all liens and encumbrances; (d) Vendor has commercial general liability insurance of the type and in an amount not less than is customarily obtained by manufacturers of established reputation in respect of the same or similar products and sufficient to meet foreseeable liabilities in respect of the Products and under the Purchase Orders; (e) the Products do not and will not infringe the patent, copyright, trademark, trade secret, trade dress, or other intellectual property rights of any person, firm, or corporation anywhere in the world, and Vendor is unaware of any pending or threatened, claims, or litigation based upon Vendor's infringement of any such rights in respect of the Products; (f) all Products supplied and work performed under the Purchase Orders shall comply with all applicable United States and foreign laws and regulations including, but not limited to, emission and safety standards, OSHA, Consumer Product Safety Act, the Fair Labor Standards Act of 1938 (29 U.S.C. 201-219), The Toxic Substance Control Act of 1976 (15 U.S.C. 2601), the requirements of ISO9001 or AS9100, all laws restraining the use of convict labor, state right-to-know laws and regulations and worker's compensation laws and

(g) no counterfeit or substitute parts or components have been used in the manufacture of any Products delivered under any Purchase Order. If applicable (per flow down on Company's Purchase Order), Vendor further represents and warrants that all Products and shipments of Products: (a) shall be accompanied by a Certificate of Compliance stating that: "All 'Specialty Metals' used in items supplied against this Purchase Order must comply with the requirements of DFARS 252.255-7014, Alt. 1 'Preference of Specialty Metals.' This requirement shall flow down to all subcontractors and purchase orders at each tier of supplier."; (b) shall comply with all United States export control laws, rules, and regulations applicable to the manufacture, sale, distribution, and re-export of the Products including, without limitation, to the extent applicable, the Export Administration Act of 1979 and the Export Administration Regulations promulgated thereunder, the Arms Export Control Act of 1976, the International Traffic in Arms Regulations (ITAR), and the Foreign Corrupt Practices Act; (c) shall not use or incorporate any Substance of Any High Concern (SHVC's) in its manufacturing processes under the Regulation (EC) NO.1907/2006 of the European Parliament and of the Council as identified in the 17 January 2017 update; and (d) shall disclose the use of certain conflict metals originating from the Democratic Republic of the Congo and any adjoining country to be in compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act. Vendor further represents and warrants that it has taken all technical and organizational measures necessary to protect the information technology systems and data used in connection with the design, specifications, parts, components and processes used to manufacture the Products, as well as all other confidential information and intellectual property rights of Company. Without limiting the foregoing, Vendor has used reasonable efforts to establish and maintain, and have established, maintained, implemented and complied with, reasonable information technology, information security, cyber security and data protection controls, policies and procedures (e.g., compliance with the National Institute of Standards and Technology (NIST) approved-methods), including oversight, access controls, encryption, technological and physical safeguards and business continuity/disaster recovery and security plans that are designed to protect against and prevent breach, destruction, loss, unauthorized distribution, use, access, disablement,

misappropriation or modification, or other compromise or misuse of or relating to any such information or data Company and/or the Products. All representations and warranties set forth in this Section 5 shall survive delivery, inspection, payment and termination of the applicable Purchase Order, and shall run to Company, its customers, affiliates, successors and assigns.

6. Vendor's Compliance with Laws and Company's Code of Conduct.

In addition to the foregoing representations and warranties, Vendor covenants and agrees that it and its employees, agents, representatives and affiliates, shall comply with (a) all laws applicable to its performance of its obligations under any Purchase Order, including all laws applicable to the manufacture, sale, import, export and distribution of the Products, and (b) XMA's [Supplier Code of Conduct](#). Vendor must provide evidence of compliance with such laws to Company at such time as Company may reasonably request.

7. Audit Rights.

Vendor is responsible for keeping accurate and reasonable records related to its performance and obligations under each Purchase Order. In particular, records will be kept documenting any price, cost or budget computations required under the Purchase Orders. Vendor agrees that Company or its duly authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of these Terms and Conditions and/or any Purchase Order, subject to such persons as will have access to such materials first executing a Nondisclosure Agreement mutually acceptable to Company and Vendor, each acting reasonably. Vendor shall make available to Company or its agents all such records and documents for audit on Vendor's premises during regular and reasonable working hours within ten (10) business days of a written request for availability accompanied by the signed Nondisclosure Agreement. Vendor agrees to either:

- A. allow Company to make and retain copies of those documents useful for documenting the audit activity and results, or
- B. sequester the original or copies of those documents Company identifies for later

access by Company. Vendor further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of any Purchase Order.

8. Indemnification; Warranty Disclaimer.

Vendor shall defend, indemnify and hold Company, its employees, agents, affiliates, officers, directors, shareholders, and customers harmless from and against any and all claims howsoever arising, whether sounding in tort (including personal injury or any property damage), contract, warranty, or otherwise, and all liabilities, losses, damages, and expenses, including without limitation attorney's fees and court costs, arising from or related to: (i) any breach or failure of the covenants, warranties, representations, and commitments of Vendor contained in these Terms and Conditions or any Purchase Order; (ii) the manufacture, delivery, and sale of the Products; (iii) the costs and expenses incurred by Company due to any defects in or late delivery of the Products; (iv) any and all liability, loss or damage, cost or expense (including court costs and reasonable attorneys' fees) arising out of or resulting from use of any Products and/or (v) any actual or claimed trademark, patent, trade secret, trade dress, or copyright infringement based on any purchase, use, offer for sale, or sale of the Products. The foregoing defense, indemnification and hold harmless obligations shall survive delivery, inspection, payment and termination of the applicable Purchase Order, and shall run to Company, its customers, affiliates, successors and assigns. Company shall give Vendor written notice of any breach of warranty promptly after Company's discovery thereof and shall, within a reasonable time period of receiving notice of any indemnified claim (but not to exceed the greater of thirty (30) days from notice), notify Vendor of any such indemnified claim.

9. Limitation of Liability.

Except for (a) any breach of the confidentiality covenants under these Terms and Conditions or any other written agreement between Company and Vendor; and/or (b) damages for which Vendor becomes liable to indemnify Company under this Section 8 above; in no event shall either Party be liable to the other for incidental, exemplary, indirect, special, punitive or consequential damages.

10. Termination; Remedies.

Without limiting Company's rights or remedies at law or in equity for breach by Vendor of any provisions of these Terms and Conditions or any Purchase Order, Company shall have the right to terminate, partially terminate, reject or partially reject any delivery of Products under, and/or vary the delivery terms under, any Purchase Order, immediately upon written notice to Vendor of the occurrence of any of the following conditions: (a) Vendor fails to ship any Products on the "delivery" date indicated on the front of the Purchase Order; (b) Any Products do not conform to applicable descriptions or specifications; (c) Vendor fails to comply with any other material provision of the Purchase Order or these Terms and Conditions; (d) Vendor assigns the Purchase Order in violation of these Terms and Conditions; (e) Vendor becomes insolvent or makes an assignment for the benefit of creditors or a receiver or similar officer is appointed to take charge of all or part of Vendor's assets; or (f) Company's awareness of any actual or potential claim, liability, loss, and/or damage for which Vendor may owe Company a duty of indemnification under these Terms and Conditions (as solely determined by Company) and related in any way to the purchase, use, importation, offer for sale, or sale of any Products. Vendor hereby agrees and acknowledges that any breach of the representations, warranties and/or covenants set forth in these Terms and Conditions could cause substantial and irreparable harm to Company's business which may not adequately be compensated by money damages alone. Accordingly, in addition to and without limitation of any other remedy that may be available to Company for breach of any such representations, warranties or covenants, Company shall have the right to seek injunctive or other equitable relief available to Company. All rights and remedies conferred by these Terms and Conditions and/or any Purchase Order, by any other instrument or by law are cumulative and may be exercised singularly or concurrently.

11. Confidentiality.

All non-public, confidential or proprietary information, including but not limited to, each Party's product plans, designs, costs, prices and names, finances, marketing plans, business opportunities, pricing, sales data, prospects and customer lists and information, order history, personnel, research, development, intellectual

property, methods, processes, specifications, trade secrets or know-how (the "Protected Data"), which is not generally known and which one Party (the "Providing Party") provides to the other (the "Non-providing Party") in connection with any Purchase Order, shall be deemed confidential and proprietary to the Providing Party, and will be held in confidence by the Non-providing Party, and will not be utilized for the latter's benefit or disclosed by the latter to others, except if such information (a) was generally known to the public other than by reason of disclosure by the Non-Providing Party in violation of these Terms and Conditions; (b) was independently known to the Non-Providing Party prior to disclosure by the Providing Party, as demonstrated by clear and convincing documentation in the Non-Providing Party's files; or (c) was independently developed by a third person, who disclosed it to the Non-Providing Party as demonstrated by clear and convincing documentation in the Non-Providing Party's files. In the event of any dispute arising from or relating to Protected Data, the burden of proof in establishing any of the foregoing shall be on the Non-Providing Party.

12. Contractual Relationship.

It is understood and agreed that Vendor and Company are, and at all times shall remain, independent contractors and no partnership or joint venture is intended or implied by the undertakings set forth in any Purchase Order or these Terms and Conditions. At no time shall either Party represent to any third party that it is the agent of the other. In no event shall either Party at any time have authority to make any contracts, commitments or undertake any obligations on behalf of the other Party. Without limiting the foregoing, Company and Vendor each agree that they will not represent to any person that it acts for or on behalf of the other or make use of the other's name, or advertise its relationship with the other, without express written consent in each instance.

13. Confidentiality of Purchase Orders.

Neither Party may disclose the terms of any Purchase Order to any other Party (other than Company's and Vendor's respective legal and other advisors involved in negotiating any Purchase Order) without the other Parties' prior written consent.

14. Assignment.

Vendor may not assign or delegate any Purchase Order, or any obligation or right under it (the word

"assign" to include without limitation, any assignment by operation of law), without Company's prior written consent. Company may engage or contract with any affiliate hereof to perform the obligations or enjoy the rights created under any Purchase Order or assign any provisions thereof to any affiliate.

15. Binding on Successors.

Each Purchase Order and these Terms and Conditions shall be binding upon the Parties hereto, their successors in interest and assigns.

16. Entire Agreement; Amendment.

These Terms and Conditions and all Purchase Orders issued by Vendor shall comprise all of the agreements of the Parties in the respect to the subject matter hereof. All prior quotations, proposals, promises, representations, discussions, negotiations, communications or understandings concerning the same shall be of no further force and effect. No modification, amendment, extension, renewal, rescission, termination or waiver of any of the provisions contained herein, or any future representation, promise or condition in connection with the subject matter hereof, shall be binding upon either Party unless agreed to in writing and signed by an authorized officer on behalf of each Party.

17. Choice of Law/Jurisdiction.

Each Purchase Order shall be governed by the laws of the state of New Hampshire, without reference to its conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of any Purchase Order and/or these Terms and Conditions to the substantive law of another jurisdiction. The Parties agree that any action hereon shall be brought exclusively in a state or federal court of proper subject matter jurisdiction, located within New Hampshire, or in any court to which an appeal from a New Hampshire situated court can be taken. Each Party irrevocably designates the Secretary of the State of New Hampshire as its agent for service of process in any action between the Parties arising out of any Purchase Order and/or these Terms and Conditions. The Parties hereby opt out of the Convention for the Sale of International Goods (CISG).

18. Captions and Headings.

Captions and paragraph headings are for ease of reference only and shall not be referred to in

interpreting any Purchase Order and/or these Terms and Conditions.

19. Severability.

In the event that one or more provisions of any Purchase Order and/or these Terms and Conditions shall for any reason be found to be void, invalid or unenforceable by a court of competent jurisdiction, the remainder of such Purchase Order and these Terms and Conditions shall nonetheless remain in full force and effect, and shall be construed by the court (to the greatest extent possible) in such a way as to confer upon the Parties the benefits and rights which they would have possessed under such Purchase Order as a whole, had the invalidated provisions) remained in effect.

20. No Waiver.

The failure of either Party to insist, in one or more instances, upon strict performance of any Purchase Order and/or these Terms and Conditions, or to exercise any right contained herein, shall not be constructed as a waiver or relinquishment of the right to insist on the strict performance of such obligations or any other occasion.

21. Notice.

All notices required or permitted under these Terms and Conditions and/or any Purchase Order shall be in writing, shall reference the applicable Purchase Order and be deemed effective when: (a) delivered personally; (b) when sent by confirmed facsimile, telex, or e-mail; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit specifying next day delivery with a commercial overnight carrier that provides written verification of receipt. All communications will be sent to the addresses set forth on the applicable Purchase Order or to such other address as either Party may designate to the other Party in writing.