

XMA TERMS AND CONDITIONS OF SALE

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

1. Product Prices; Taxes and other charges.

All Product prices shown in a Sales Order shall be in currency of the United States of America and shall be based on Company's then-current price list or other written quote. Product prices in a Sales Order that has been issued by Company to a Purchaser are guaranteed for thirty (30) days, but may be subject to change thereafter.

Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Company and Purchaser in connection with any Sales Order, shall be paid by Purchaser in addition to the prices quoted or invoiced unless otherwise specified in the Sales Order. In the event Company is required to pay any such tax, fee or charge, then unless otherwise specified in the Sales Order, Purchaser shall promptly reimburse Company therefore; or, in lieu of such payment, Purchaser shall provide Company at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

2. Payment Terms; Late Charges; Payment Default; and Remedies.

The payment terms under any Sales Order are net thirty (30) days from the date of invoice as stated on the applicable Sales Order, unless otherwise agreed upon in writing between the Parties. Any invoices not paid within such thirty (30) day period shall be subject to a late charge of one and a half percent (1.5%) per month (compounded). If the financial condition of Purchaser results in the insecurity of Company, in its sole and unfettered discretion, as to the ultimate collectability of the purchase price in any Sales Order, Company may,

without notice to Purchaser, terminate, delay or postpone the delivery of the Products; and Company, at its sole option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of said Products. In the event of any default by Purchaser in the payment of the purchase price under any Sales Order or otherwise, Company, at its sole option, without prejudice to any other of Company's lawful remedies, may defer delivery, cancel any Sales Orders placed by Purchaser, or sell any undelivered Products on hand for the account of Purchaser and apply such proceeds as a credit, without set-off or deduction of any kind, against any amounts owed to Company, and Purchaser agrees to pay the balance then due to Company on demand. Purchaser agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Purchaser in any of the terms of any Sales Order or these Terms and Conditions. Company shall accept payment from Purchaser under any Sales Order by ACH, wire transfer, Purchaser's check or any other reasonable method of payment agreed to in writing by the Parties.

3. Product Availability; Delivery.

A. Product Availability. All Sales Orders are subject to availability of Products. Any Products quoted with a lead time based upon in-stock status is subject to prior sale and availability. If Company is unable for any reason to supply the total demand for Products specified in any Sales Order, Company may allocate its viable supply among any or all of its customers on such basis as Company may deem fair and practical, without

liability for any failure of performance which may result therefrom. Company shall notify Purchaser if a Sales Order cannot be filled or can be filled only partially. Sales Orders for early shipment shall have priority in the event of Product shortage. Company shall not be liable for any damages or costs resulting from unfilled or partially filled Sales Orders.

B. **Delivery.** Company shall deliver Products to Purchaser Ex Works Company's shipping point (Manchester, New Hampshire or Tianjin, China, as specified on the applicable Sales Order) unless otherwise agreed in writing between the Parties. Company reserves the right to select the country of origin unless otherwise agreed in writing in a Sales Order issued by Company to Purchaser. If duties, taxes, shipping and handling charges are quoted or invoiced, the applicable Sales Order will include such charges in addition to actual freight costs. If a Purchaser requests that Company pay any such taxes, fees or charges, Purchaser shall promptly reimburse Company therefore. Company reserves the right, in its discretion, to determine the exact method of shipment. Company reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of Purchaser's obligations to accept remaining deliveries. Immediately upon Purchaser's receipt of any Products shipped under any Sales Order, Purchaser shall inspect the same and shall notify Company in writing of any claims for shortages, defects or damages and shall hold the Products for Company's written instructions concerning disposition. If Purchaser shall fail to so notify Company within twenty (20) days after the Products have been delivered by Company, such Products shall conclusively be deemed to conform to the applicable Sales Order and these Terms and Conditions and to have been irrevocably accepted by the Purchaser. Company shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder

due to any cause beyond Company's reasonable control, including, without limitation, unsuccessful reactions, act of Purchaser, embargo or other governmental act, regulation or request affecting the conduct of Company's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices.

C. **Separate Invoices.** Each and every shipment of Products under a Sales Order shall be covered by a separate invoice. All invoices shall include the applicable Sales Order number, Product number and Product unit price set forth on the applicable Sales Order (subject to revision as set forth in Section 1 above), as well as the receiving location and the total quantity of Products included in the shipment.

D. **Title; Risk of Loss.** Delivery of the Products Ex Works to the carrier at Company's shipping point shall constitute delivery to Purchaser. Upon delivery of the Products Ex Works to the carrier at Company's shipping point, all title and risk of loss for the Products shall pass to Purchaser, and Purchaser shall bear all risk of loss or damage in transit. Company will neither issue credit for, nor accept returns of, Products damaged or lost after Company has delivered them Ex Works to the carrier at Company's shipping point. In the event of loss or damage, Purchaser must file its claim with the delivering carrier (which does not relieve Purchaser of its obligation to pay for the Products in full).

E. **Rescheduling of Delivery; Cancellation of Sales Orders by Company.** Company may without cost or liability: (a) reschedule delivery of any Products upon at least five (5) days' written notice before the "delivery" date set forth on the applicable Sales Order, or (b) cancel a Sales Order, or any part of it, upon at least twenty (20) days' written notice before such "delivery" date.

4. No Cancellation by Purchaser.

Purchaser may not cancel any Sales Order unless such cancellation is expressly agreed to in writing by Company. In such event, Company will advise Purchaser of the total charge for such cancellation, and Purchaser shall pay such charges, including, but not limited to, storage and shipment costs, costs of producing non-standard materials, costs of purchasing non-returnable materials, cancellation costs imposed on Company by its suppliers, and any other costs resulting from cancellation of any Sales Order by Purchaser.

5. Purchaser's Representation and Warranties.

Purchaser represents and warrants that it shall use all Products ordered from Company in accordance with Section 10 below and that any such use of Products will not violate any law or regulation.

6. Changes to Product Design; Engineering Services; and Intellectual Property Rights.

Purchaser and Company may agree in writing that Company shall provide engineering services in connection with any special requirements of Purchaser for a particular Product. In any such case, the fees for any such engineering services shall be mutually agreed by the Parties in writing. All resulting Product designs, modifications, enhancements, configurations, specifications and technology, including without limitation, all intellectual property rights, technology, data, database and other property and information, shall be the exclusive property of Company and shall not be disclosed to any third parties without the express written agreement of Company. The fees for any such engineering services provided by Company shall be invoiced upon Purchaser's written approval of the design (if required) and release of the design to manufacturing. COMPANY MAKES NO WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO ANY ENGINEERING SERVICES PROVIDED BY COMPANY OR COMPANY'S PERSONNEL.

7. Technical Assistance.

At Purchaser's request, Company may, at Company's sole discretion, furnish technical assistance and information to Purchaser with respect to any Products. In any such case, the fees for any such technical assistance shall be mutually agreed by the Parties in writing. COMPANY MAKES NO WARRANTIES OF ANY KIND OR

NATURE, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO ANY TECHNICAL ASSISTANCE OR INFORMATION PROVIDED BY COMPANY OR COMPANY'S PERSONNEL. ANY SUGGESTIONS BY COMPANY REGARDING USE, SELECTION, APPLICATION OR SUITABILITY OF THE PRODUCTS SHALL NOT BE CONSTRUED AS AN EXPRESS WARRANTY UNLESS SPECIFICALLY DESIGNATED AS SUCH IN A WRITING SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF COMPANY.

8. Purchaser's Compliance with Laws; Export Compliance.

In addition to any other representations and warranties made by Purchaser, Purchaser covenants and agrees that it shall comply with all laws applicable to its performance of its obligations under any Sales Order, including all laws applicable to the purchase, sale, import, export and use of the Products. In particular, Purchaser acknowledges that the Products are subject to U.S. export laws, rules, treaties, regulations, and international agreements. All individuals (including Purchaser) who access Company's website or purchase Products or services from Company specifically assume the responsibility of complying with all applicable US export laws, rules, treaties, regulations, and international agreements along with applicable foreign laws when transferring, selling, importing, exporting, re-exporting, deemed exporting, diverting, or otherwise disposing of any Products, programs, and/or services. Export controls may include, but are not limited to, those of the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the U.S. Department of State. Specifically, Purchaser agrees that it shall not, directly or indirectly, sell, export, reexport, transfer, divert, or otherwise dispose of any Products to any destination, entity, or person prohibited by any applicable laws or regulations of the United States or any other jurisdiction without obtaining prior written authorization from the competent government authorities as required by those laws and regulations. Purchaser further represents and warrants that it

is: (1) not located in any country that is subject to a United States government embargo or other economic sanctions; (2) not located in any country or that has been designated by the United States government as a "terrorist supporting" country; (3) not listed on any U.S. Government list of prohibited or restricted parties and (4) not a denied party as specified in any applicable export or re-export laws or regulations or similar laws applicable in other jurisdictions. Purchaser must provide evidence of compliance with all such laws to Company at such time as Company may reasonably request.

9. Audit Rights.

Purchaser is responsible for keeping accurate and reasonable records related to its performance and obligations under each Sales Order. Purchaser 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 Sales Order, subject to such persons as will have access to such materials first executing a Nondisclosure Agreement mutually acceptable to Company and Purchaser, each acting reasonably. Purchaser shall make available to Company or its agents all such records and documents for audit on Purchaser'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. Purchaser 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. Purchaser further agrees to disclose within ninety (90) days of receipt any independent auditors' reports, which bear directly on the performance or administration of any Sales Order.

10. Warranties.

Company warrants that the Products shall conform to the specifications and description of such Products as provided to Purchaser by Company in the outline drawings attached to each Sales Order. THIS WARRANTY IS EXCLUSIVE, AND COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY

OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. In particular, Company does not warrant that the use or sale of the Products delivered under will not infringe the claims of any United States or other patents covering the Product itself or the use thereof in combination with other products or in the operation of any process. The foregoing warranties made in connection with any Sales Order shall not be effective if Company has determined, in its sole discretion, that Purchaser has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices, or has failed to use the Products in accordance with instructions, if any, furnished by Company. Company's sole and exclusive liability and Purchaser's exclusive remedy with respect to Products proved to Company's satisfaction to be defective or nonconforming shall be replacement of such Products without charge or refund of the purchase price, in Company's sole discretion, upon the return of such Products in accordance with Company's instructions. All claims must be brought within one (1) year of shipment, regardless of their nature.

11. Indemnification by Purchaser.

Purchaser shall defend, indemnify and hold Company, its employees, agents, affiliates, officers, directors, shareholders, successors and assigns 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 Purchaser's breach or failure of the covenants, warranties, representations, and commitments contained in these Terms and Conditions or any Sales Order. Purchaser shall notify Company in writing within fifteen (15) days of Purchaser's receipt of knowledge of any claim, accident, or incident involving Company's Products which results in personal injury or damage to property, and Purchaser shall fully cooperate with Company in the investigation and determination of the cause of such accident and shall make available to Company all statements, reports and tests made by Purchaser or made available to Purchaser by others. The furnishing of such information to Company and any investigation by Company of such information or incident report shall not in any way constitute any assumption of any

liability for such accident or incident by Company. The foregoing defense, indemnification and hold harmless obligations shall survive delivery, inspection, payment and termination of the applicable Sales Order, and shall run to Company, its customers, affiliates, successors and assigns. Company shall give Purchaser 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 Purchaser of any such indemnified claim.

12. 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 Purchaser; and/or (b) damages for which Purchaser becomes liable to indemnify Company under any Sales Order or these Terms and Conditions; in no event shall either Party be liable to the other for incidental, exemplary, indirect, special, punitive or consequential damages. IN PARTICULAR, COMPANY SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND RESULTING FROM ANY USE OR FAILURE OF THE PRODUCTS, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE INCLUDING, WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF PURCHASER OR OTHER USE OR ANY LIABILITY OF PURCHASER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY COMPANY'S GROSS NEGLIGENCE.

13. Equitable Remedies.

Purchaser hereby agrees and acknowledges that any breach of the representations, warranties and/or covenants set forth in any Sales Order and/or 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 Sales Order, by any other instrument or by law are cumulative and may be exercised singularly or concurrently.

14. Confidentiality.

All non-public, confidential or proprietary information, including but not limited to, the terms of any Sales Order, 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 Sales 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.

15. Termination.

If: (a) Purchaser violates, or is charged with a violation of any law, regulation or ordinance which may govern the sale, import, export, handling, disposition or use of any Products; or (b) Purchaser becomes insolvent, or makes any assignment for the benefit of creditors, or is adjudged bankrupt, or if a receiver or trustee of Purchaser's property is appointed; then Company may, in its sole discretion, terminate

any Sales Order and may refuse to make any further deliveries.

16. Contractual Relationship.

It is understood and agreed that Purchaser 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 Sales 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 Purchaser 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.

17. Assignment.

Purchaser may not assign or delegate any Sales 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 Sales Order or assign any provisions thereof to any affiliate.

18. Binding on Successors.

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

19. Entire Agreement; Amendment.

These Terms and Conditions and all Sales Orders issued by Company shall comprise all of the agreements of the Parties in 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 Sales Order or 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.

20. Choice of Law/Jurisdiction.

Each Sales 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 Sales 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 Sales Order and/or these Terms and Conditions. The Parties hereby opt out of the Convention for the Sale of International Goods (CISG).

21. Captions and Headings.

Captions and paragraph headings are for ease of reference only and shall not be referred to in interpreting any Sales Order and/or these Terms and Conditions.

22. Severability.

In the event that one or more provisions of any Sales 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 Sales 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 Sales Order as a whole, had the invalidated provisions) remained in effect.

23. No Waiver.

The failure of either Party to insist, in one or more instances, upon strict performance of any Sales 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.

24. Notice.

All notices required or permitted under these Terms and Conditions and/or any Sales Order shall be in writing, shall reference the applicable Sales 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 Sales Order or to such other address as either Party may designate to the other Party in writing.