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XSYSTOR

TERMS OF SALE
June 2015

I. **WARRANTY/RETURN POLICY.** (a) Warranty. Seller warrants that its products conform to Seller's applicable specifications at the time of delivery. Unless provided otherwise, samples, prototypes lots and/or pre-production runs do not create or imply any warranties. Seller's warranty obligation is limited to, at Seller's option, replacement of or granting Buyer credit at the invoiced price for any defective product returned to Seller's designated location within one (1) year from the date of product delivery. This warranty shall not apply to any product which has been repaired, altered or which has been damaged such that Seller is unable to verify the defect with its normal test equipment, or which has been subjected to abuse (including without limitation electrostatic discharge), or improper (i) handling, (ii) installation, (iii) maintenance, (iv) removal, (v) modification or (vi) use. Seller's warranty shall not be enlarged, and no obligation or liability shall arise out of Seller's rendering of technical advice, facilities or service in connection with Buyer's order or the products furnished. (b) Return Policy. Products may not be returned without Seller's consent. Buyer shall request and obtain Seller's written Return Material Authorization ("RMA") before returning products of any type, including warranty repair returns; all return documentation must contain Seller's return authorization identification number. Seller will refuse returned shipments not approved by Seller, or not properly identified. The request for return approval must include serial number, part number, lot number and date code, when possible, full identification of products to be returned, and explanation for the return request. Proper handling procedures must be used in the packing and shipping of all returned products. Products must be returned in the same or equivalent container in which they were shipped with the RMA number clearly visible on the package. Buyer retains title to products returned for repair. (c) Limitations. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THESE WARRANTIES ARE IN LIEU OF ANY (A) IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND (B) WARRANTIES OF NON-INFRINGEMENT, AND (C) ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. (d) RoHS Disclaimer. THE PRODUCTS BEING SOLD UNDER THIS INVOICE MAY OR MAY NOT COMPLY WITH THE SO-CALLED ROHS REGULATIONS. ROHS COMPLIANT PRODUCTS ARE SHIPPED IN PACKAGES OR CONTAINERS THAT ARE MARKED "LEAD-FREE" OR "ROHS COMPLIANT". BUYER MUST ENSURE THAT NON-COMPLIANT PRODUCTS ARE NOT PLACED ON THE MARKET ANY EUROPEAN UNION MEMBER STATE.

2. **LIMITATION OF LIABILITY.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE LIABILITY OF SELLER, WHETHER UNDER CLAIMS OF WARRANTY,

NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID. UPON EXPIRATION OF THE WARRANTY PERIOD ALL LIABILITY SHALL TERMINATE. SELLER AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, REMOTE CONSEQUENTIAL OR PUNITIVE DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOST PROFITS, SAVINGS, OR REVENUES, HOWEVER ARISING FROM OR CAUSED, DIRECTLY OR INDIRECTLY, BY THE USE OF PRODUCT BY BUYER, OR BY THE PERFORMANCE OR FAILURE OF THE SELLER TO PERFORM UNDER THIS AGREEMENT, OR BY ANY OTHER ACT OR OMISSION OF SELLER, OR BY ANY OTHER CAUSE.

3. **SHIPMENTS / DELIVERY / SECURITY/ FORCE MAJEURE;/ RESCHEDULING.** (a) Shipments. All shipments are F.O.B. Origin for delivery to U.S. locations, and ex works Seller's point of shipment for all other shipments, except as otherwise expressly agreed in writing by Seller. Buyer assumes title and risk of loss and damage upon Seller's shipment of product. Except as otherwise agreed, transportation charges shall be pre-paid by Seller and billed to and paid by Buyer. Shipping dates are approximate and subject to Seller's lead times. Products delivered more than thirty (30) days before scheduled date(s) may be returned to Seller. (b) Deliveries. Claims against Seller for shortages must be made within ten (10) days after receipt of shipment. Seller is not liable for losses or added costs due to delivery delays. Partial shipments are permitted. (c) Security. Seller retains a security interest in all products until full payment for product has been made; Buyer agrees to do all acts necessary to maintain Seller's security interest. Buyer hereby appoints Seller as its agent and Attorney-in-Fact to execute any financing statements under the Uniform Commercial Code and any appropriate amendments thereto on Buyer's behalf which Seller deems necessary to protect Seller's interest in the Products. (d) Force Majeure. Seller is not liable for acts of God, acts of Buyer, acts of civil or military authority, fires or other casualty, labor disputes, strikes, floods, war, earthquakes, delays in transportation; inability beyond Seller's reasonable control to obtain necessary labor, materials, components or manufacturing facilities; or any other commercial impracticability or cause beyond Seller's reasonable control. In such event, Seller may require dates to be appropriately adjusted. (e) Rescheduling (i), No rescheduling of Purchase Order(s) or Purchase Order line item(s) that are currently scheduled for delivery in less than ninety (90) days, except as allowed by Seller, at Seller's sole discretion. (ii) Seller will, upon receipt of Buyer's written request, at Seller's sole discretion, on a one-time basis only, and at no charge to the Buyer, reschedule Purchase Order(s) or Purchase Order line item(s) for

products that are scheduled for delivery in less than ninety (90) days, to a reschedule date to be determined by Seller. Such reschedule date shall be no more than sixty (60) days after the then-current scheduled delivery date. (iii) Seller will, upon receipt of Buyer's written request, at Seller's sole discretion, reschedule Purchase Order(s) or Purchase Order line item(s) for products that are scheduled for delivery in more than ninety (90) days, provided the reschedule date shall be no more than sixty (60) days after the then-current scheduled delivery date. (iv) In no event, except at Seller's sole discretion, may any Purchase Order be rescheduled earlier than Seller's then current lead-time. (v) If any Purchase Order or Purchase Order line item previously rescheduled, with Seller's permission, in accordance with (ii) above, is rescheduled a second time, Buyer acknowledges that the entire Purchase Order or Purchase Order line item is subject to, at Seller's sole discretion, (1) a rescheduling fee not to exceed 25% of the rescheduled Purchase Order and/or Purchase Order line item or (2) cancellation by Seller.

4. **TRANSPORTATION / PACKAGING.** Seller will ship products using its established methods of packing and transportation, except as otherwise instructed by Buyer. If Buyer requires other packing or preparation, Buyer will pay the additional costs.

5. **QUANTITY VARIATION.** If products ordered by Buyer are not standard items customarily carried in stock by Seller:

(a) delivery of 90% or more of the amount specified shall constitute fulfillment of the order; and (b) Seller may deliver up to 110% of the order quantity. In both cases, the charges shall be adjusted to reflect the actual amounts shipped.

6. **PRICES / PAYMENTS / MINIMUM BUY QUANTITIES.**

(a) Prices. Except as otherwise stated in writing, Seller quotations remain valid for a period of thirty (30) days from date of quotation. All prices are stated in U.S. dollars.

(b) Payments. Unless otherwise agreed in writing, payment terms are cash, certified check, C.O.D., or irrevocable Letter of Credit (L/C), U.S. dollars, without right of setoff. No discounts are authorized. Subject to Seller's approval of Buyer's credit, payment is due thirty (30) days from date of invoice. Seller may charge an interest of 1.5% per month on all overdue accounts. All sales are subject to prior approval of Seller's Credit Department. The amount of credit or terms of payment may be changed by Seller at any time for any reason. *Pro rata* invoices will issue with respect to partial shipments. If shipment is delayed by Buyer, payment is due on the date Seller is prepared to make shipment, and products held for Buyer shall be at the risk and expense of Buyer. Failure to make payment within ten (10) days of demand by Seller shall, at Seller's option, constitute repudiation of any outstanding orders, in which event Seller shall be entitled to assert cancellation charges as described in Section 9 of these terms. In the event of bankruptcy or insolvency of Buyer, or in the event any proceeding is brought

by or against Buyer under bankruptcy or insolvency laws, Seller may cancel outstanding orders and assert cancellation charges as described in Section 9 of these terms. (c) Minimum Buy Quantities. Buyer acknowledges that certain products offered by Seller and contained in Seller's price list are subject to minimum buy quantities.

7. **REMITTANCE.** Except as otherwise instructed in writing, payments shall be made to Seller's invoice address. Payment advice must reference the appropriate Seller invoice.

8. **CHANGES, PRODUCT DISCONTINUATION & LAST TIME BUY ORDERS.** (a) Changes. Seller reserves the right at any time and without notice to Buyer, to make changes in the product(s) which do not adversely affect the form, fit or function of the product(s). For changes that adversely affect form, fit or function, Buyer may by written order request changes in drawings, designs and specifications of products manufactured for Buyer, and to method of shipment, ship-to location and packaging. If such written order request is accepted, Seller shall be entitled to an equitable adjustment for any increase cost, time or in any other material aspect of an order arising from Buyer's changes. All equitable adjustment increases in cost shall be paid 30 days after invoice submittal.

(b) Product Discontinuation & Last Time Buy. Seller reserves the right to discontinue manufacturing any product at any time. Seller will provide Buyer with reasonable advanced written notice regarding its plan to discontinue manufacturing any product ("Discontinued Product") so as to afford Buyer with the opportunity to place a last time buy for Discontinued Product ("Last Time Buy"). Purchase Orders for any Last Time Buy must be placed no later than one hundred twenty (120) days from the date of the Discontinued Product notice, and shipment of the Last Time Buy must be scheduled to occur no later than two hundred forty (240) days from the Last Time Buy order date, provided such order date is within the one hundred twenty (120) day period stated above. Last Time Buy orders may not be canceled or rescheduled for any reason, and are subject to minimum order requirements and pricing guidelines. Last Time Buys may not be returned, except as set forth in Section 1 above.

9. **CANCELLATION / TERMINATION.** Purchase Orders for products may not be cancelled. In the event Seller, at Seller's sole discretion, permits cancellation of any Purchase Order, (a) Buyer must accept delivery of, and pay for at the agreed upon price(s), all products which are substantially manufactured and allocable to the Purchase Order; and (b) Buyer must pay all Seller's direct and indirect costs relative to all other products, components and work-in-process allocable to the Purchase Order, together with a reasonable profit based on such costs. Such costs will include but not be limited to the costs of canceling the Purchase Order, segregating materials, preparing cancellation claims, and similar costs.

10. **PATENTS.** Seller will defend any proceeding brought against the Buyer based on a claim that Seller's product infringes a U.S. patent, if notified promptly in writing and given full authority, information and assistance (at Seller's expense)

for the defense. Subject to the limitations set forth in Section 2, Seller will pay all damages finally awarded in such a proceeding. In case the product is deemed to infringe and its use is enjoined, Seller will at its option, either arrange for the Buyer the right to continue using the product, or replace the product with a non-infringing comparable product, or accept the return of the product and refund Buyer's purchase price. THIS PARAGRAPH STATES THE ENTIRE LIABILITY OF SELLER AND ITS SUPPLIERS FOR PATENT INFRINGEMENT. Seller shall not be liable for, and Buyer shall defend and hold Seller harmless against, claims arising from compliance with Buyer's designs, specifications or instructions, or from the combination of Seller's products with other devices or elements, or from any particular use of Seller's products. The sale of products does not grant or imply any licenses of patents or other intellectual property rights, whether as to products or combinations of products with other devices or elements.

11. **TAXES AND DUTIES.** Prices do not include sales, use, excise value-added or other taxes or duties. All taxes and duties in effect or levied which are applicable to Buyer's purchases shall be paid by Buyer.

12. **DISPUTES.** Any dispute, controversy or claim arising out of or relating to this Agreement, or the interpretation, breach, termination or validity hereof, shall be resolved through friendly consultation. Such consultation shall begin immediately after one party has delivered to the other party a written request for such consultation. If after thirty (30) days the parties are unable to resolve the dispute through as described in this Section, the parties hereto agree to attempt in good faith to settle the dispute by mediation to take place in Seller's location described on the face of this order acknowledgement. Either party shall initiate the mediation by so requesting in a writing such initiation which shall be delivered to the other party. Within ten (10) calendar days of request receipt, the parties hereto shall confer for the purpose of selecting a mutually agreeable mediator to be appointed from the Judicial Arbitration and Mediation Services (JAMS). If the parties hereto have not been able to agree upon a mediator within twenty (20) calendar days of the request for mediation, or if mediation is unsuccessful, either party may request that JAMS appoint an arbitrator. Said arbitration shall take place at Seller's location as described on the face of this order acknowledgement or Los Angeles County in the state of California. Judgment on an award rendered by the arbitrator may be entered in any court having competent jurisdiction. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this provision. All mediation and arbitration proceedings shall be conducted in the English language. Each party shall be responsible for its own mediation and arbitration costs. Each party shall cooperate with the other in making full disclosure of and providing complete access to all information and documents reasonably requested by the other party in connection with such proceedings, subject only to any confidentiality obligations binding on such party.

13. **GOVERNING LAW.** These terms and sales of Seller's products are construed and governed by the laws of the State of California, exclusive of its conflict of laws provisions.

14. **ASSIGNMENT.** Buyer's orders and obligations are not assignable without Seller's consent and any such assignment shall be null and void.

15. **CONFIDENTIALITY.** Buyer shall hold in confidence all Seller data and information which is marked CONFIDENTIAL or PROPRIETARY if disclosed in documentary form, or which is so identified at the time of disclosure if disclosed in other form. The following information shall not be protected by this paragraph: (i) information that is publicly available without breach of any obligation; (ii) information that is rightfully received from a third party without restriction; (iii) information that is independently developed by Buyer; and (iv) information that is properly in the possession of Buyer without restriction prior to disclosure. Seller may state in its marketing materials, including Seller's website and sales and corporate presentation materials, that Buyer is a customer of Seller. Subject to the prior written consent of Buyer, and provided such consent not to be unreasonably withheld or delayed, Buyer shall also serve as a reference for Seller. Such a reference may, as mutually agreed upon, include activities such as confirming Buyer's status as a customer, a published "success story", a mutually agreed upon press release, or a favorable reference to an industry analyst.

16. **WAIVER.** The waiver by either party of any term, provision, or condition must be in writing and shall not be construed to be a waiver of any other term, condition, or provision. No waiver or failure to enforce rights or remedies concerning a de-fault shall constitute a waiver of any other or subsequent default.

17. **EXPORT CONTROL.** Buyer agrees not to sell or deliver Seller's products for ultimate delivery to those areas to which delivery would be forbidden under U.S. law/regulations pertaining thereto.

18. **LIFE SUPPORT POLICY.** Seller's products are not designed, intended, authorized or warranted to be suitable for use in life support applications, devices or systems. Buyer agrees not to use the purchased products for life support applications, and further agrees to, without limitation, defend, indemnify, and hold harmless Seller and its agents from and against any and all actions, suits, proceedings, costs, expenses, damages, and liabilities including attorney's fees arising out of or in connection with the breach of Buyer's representation in this Section.

19. **GOVERNMENT CONTRACT PROVISIONS AND CLAUSES:** In the event any product purchased hereunder is incorporated into a product sold under a United States Government Contract, the Government clauses required to be passed on to the Seller are not accepted. Except as otherwise provided in writing, Seller's commercial terms in lieu of any government contract and/or subcontract requirements shall apply.

20. FIRMWARE AND OBJECT CODE SOFTWARE OWNERSHIP AND LICENSE: With respect to all software, in object code form, and firmware furnished to Buyer hereunder and any derivatives thereof (collectively "Licensed Software"), Seller shall retain ownership of all Licensed Software, and any copies thereof, in whole or in part, and all intellectual property rights pertaining to the Licensed Software. To the extent Seller has rights to do so and as applicable, Seller grants to Buyer, and Buyer acknowledges that it has been granted, a perpetual, nonexclusive, worldwide, personal and non-transferable right and license to load, run, or store the Licensed Software in machine readable form only in or with the product furnished hereunder, for the exclusive purpose of processing Buyer's internal data ("Intended Use"). Buyer will use the Licensed Software only for the Intended Use and will not, in particular but without limitation, create derivatives of the Licensed Software, nor translate, adapt, arrange, reverse compile or alter or perform error corrections nor, disclose, sell, assign, rent, lend, sublicense, or otherwise transfer the Licensed Software, or any licenses granted hereunder. To the extent Seller has the right to do so and as applicable, Seller grants to Buyer a non-transferable and non-exclusive license to use the Licensed Software, where in machine readable form only in, or with, the product furnished hereunder. Nothing in this Agreement shall be interpreted as conveying or granting a license to Buyer of any Licensed Software in source code form. Any license of software in source code shall be covered under the terms of Seller's source code license and granted under separate agreement. If by separate written agreement Seller has granted to Buyer rights to reproduce the Licensed Software, Buyer may copy such Licensed Software and may, in addition to the above, merge the Licensed Software with other subject matter to form a derivative work for incorporation into a Read Only Memory (ROM) or similar information storage device for use in, or with, each product furnished hereunder and otherwise only in accordance with and under the terms of this license. If the Licensed Software is embodied in an information storage medium furnished as part of a product purchased hereunder, or incorporated by Buyer in an information storage medium as permitted hereunder, Buyer may, in addition to the above, transfer the information storage medium as part of the transfer of the product and may convey to Buyer's transferee and to subsequent transferees the license set forth in this Section. Buyer agrees to maintain Seller's copyright notice on the Licensed Software and to include the same on all copies of any portion(s) of the Licensed Software made as permitted hereunder.

21. SAMPLE, PROTOTYPE, LICENSED SOFTWARE AND BOARD-LEVEL PRODUCTS: ALL SAMPLE, PROTOTYPE, LICENSED SOFTWARE, AND BOARD-LEVEL PRODUCTS DELIVERED HEREUNDER ARE FURNISHED "AS IS." NO SELLER INDEMNITIES ARE PROVIDED FOR SUCH PRODUCTS. SELLER MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR CREATED BY STATUTE WITH RESPECT TO SUCH PRODUCTS AND DOCUMENTATION DESCRIBING SUCH PRODUCTS. FURTHER, SELLER HEREBY EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITA

TION, THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF ALL SUCH PRODUCTS AND DOCUMENTATION DESCRIBING SUCH PRODUCTS REMAINS WITH BUYER.

ENTIRE AGREEMENT. Seller's products are commercial goods; these terms shall be construed to be between merchants. Except as agreed in writing, these terms contain the entire agreement between Seller and Buyer concerning Seller's sales of products, and no representation, affirmation of fact, course of prior dealings, promise, condition or usage of the trade shall be binding on either party. No change, modification, rescission, discharge, abandonment or waiver of these terms shall be binding upon Seller unless made in writing, and signed on its behalf by an authorized representative. Insofar as any of these terms are not enforceable in any particular jurisdiction, such unenforceable provision shall be deemed not to apply.

Direct inquiries to Seller may be made at the address on the footer of this document.