

## GENERAL TERMS AND CONDITIONS FOR PURCHASE OF COMPONENTS

### SECTION 1 - PURCHASE OF PRODUCT

**1.1 Order.** Any purchase order ("Order") submitted by Customer incorporates and is exclusively subject to the HXI Quote and these General Terms and Conditions (together the "Agreement"). Placement and acceptance of Orders shall be made by mail, email or facsimile. Electronic or faxed signatures are acceptable. Terms set forth in any purchase order or acknowledgement that are inconsistent with, different from or supplemental to those in the this Agreement are not binding on HXI unless specifically agreed to in writing by HXI.

**1.2 Acceptance of Order.** HXI shall provide written acceptance within five (5) business days from receipt of an Order. If HXI does not provide written acceptance within such five (5) day period, the Order shall be deemed rejected.

**1.3 Work Product.** HXI shall retain title to and possession of any models, patterns, molds, tools, test equipment, specifications, drawings or other information or intellectual property right created by HXI in designing and manufacturing the Products not withstanding the fact that Customer may have paid fees for engineering or design services, or that the Products were designed to specifications provided by Customer. No right, title or license to any HXI intellectual property right is granted to Customer under this Agreement.

### SECTION 2- PRICING; INVOICING; PAYMENT TERMS

**2.1 Purchase Price.** The prices for the Products (including the license fees for Licensed Materials) or the Services (the "Purchase Price") shall be the prices set forth in the Quote.

**2.2 Taxes.** The Purchase Price does not include applicable taxes on the Products. Customer shall pay when due all present and future taxes (including any related interest or penalties), including but not limited to sales, use, excise, value added, gross receipts, income or other taxes, customs duties and other import taxes, and other charges of any kind imposed by the government agencies of the United States or any foreign country (if applicable), or any political subdivision thereof, including but not limited to any tax which Customer is required to deduct from any payment to HXI, but excluding any U.S. taxes on HXI's net income. In the event that Customer has to withhold any royalty, interest or other withholding taxes on payments to HXI, Customer shall gross up the amounts payable to HXI so that following such tax withholding, HXI receives the full Purchase Price. Notwithstanding the foregoing, if HXI is required to pay any tax or other charge, for which Customer assumes the obligation under this section, Customer shall reimburse HXI on demand.

**2.3 Invoices.** HXI shall invoice Customer the Purchase Price of the Products upon Delivery of the Products.

**2.4 Payment Terms.** All invoiced amounts are due within thirty (30) calendar days after the date of receipt by Customer of such invoice. If Customer has not paid the invoice after forty-five (45) days from receipt by Customer of such invoice, HXI shall have the right to levy interest on unpaid amounts at the lesser of (i) 1.5% per month or (ii) the maximum allowed by applicable law. All payments shall be made in U.S. dollars by wire transfer to HXI's U.S. bank account, or, if approved by HXI prior to order acceptance, by other agreed upon method.

### SECTION 3 - DELIVERY

**3.1 Shipping; Packing and Labeling.** Unless otherwise provided in the Quote, delivery of the Products ("Delivery") to Customer shall be F.O.B. shipping point, or FOB EXW, Andover Massachusetts, in accordance with INCOTERMS as republished in 2000 if the shipment destination is outside the United States. HXI shall ship in accordance with HXI's standard practices and delivery intervals. Customer hereby agrees that all charges and costs for freight, carriage, delivery, insurance, shipping and handling of the Products (collectively, "Freight Costs") shall be the sole responsibility of Customer, and, unless otherwise stated in the Quote, such Freight Costs shall be prepaid by HXI and added to the invoice. HXI may ship partial shipments of Product or may ship prior to the scheduled Shipment Date. HXI will pack the Products in accordance with HXI and industry standards. Customer shall not remove any labels affixed to Products by HXI unless specifically approved by HXI in writing. Customer shall notify HXI of any special packing or labeling requirements in connection with importation of the Products in order to reach the shipment destination, and shall pay all costs of compliance with such regulations.

**3.2 Risk of Loss and Title to Products.** The risk of loss of the Products shall transfer to Customer upon Delivery of the Product(s). All right, title and interest to the Product(s) shall pass to Customer at the time of Delivery of such Product(s).

**3.3 Importation.** If the shipment destination is outside the United States, unless specifically stated otherwise in the Quote, Customer shall be responsible for the importation of the Products into the country of destination, clearance of customs, and obtaining and paying for all approvals, permits, licenses, filings or registrations required by the country of destination.

### SECTION 4 - INSPECTION, ACCEPTANCE AND INSTALLATION

**4.1 Inspection and Acceptance.** Customer shall inspect Products at the shipment destination specified in a Quote within thirty (30) days of receipt ("Return Period"). Customer may reject Products only if they fail to conform in any material respect to

the Specifications. "Specifications" means the functional specifications, designs, or usage instructions published by HXI and provided to Customer as part of Delivery. In the event Customer does not reject Products within the Return Period, such Products shall be deemed accepted by Customer. If rejected, Customer shall follow the Warranty Return procedures in Section 5.2 below.

### SECTION 5 - REPRESENTATIONS AND WARRANTIES

**5.1 Product Warranty.** Commencing on the Delivery of the Product and subject to Section 5.6 below, HXI warrants that for a period of twelve (12) months (the "Warranty Period") the Product, under normal use and service, will be free in all material respects from defective design, material and faulty workmanship and shall operate in all material respects in compliance with the applicable Specifications. The foregoing warranty shall not apply to items normally consumed during operation such as, but not limited to, lamps and fuses. HXI shall Deliver Product free and clear of any third party liens or encumbrances.

**5.2 Remedies.** If a Product is in breach of HXI's warranty during the respective Warranty Period, as Customer's sole and exclusive remedy, HXI will at HXI's election do one of the following: repair, replace (with refurbished or new Product) or modify so that the Product complies with the applicable warranty and ship the Product, as necessary, within thirty (30) calendar days after receipt by HXI of the returned Product. Customer must follow the Warranty Processing Procedures established by HXI to invoke a remedy under this Agreement. Customer is responsible for packaging the Product according to HXI's instructions and shipping it to HXI's designated service facility. All Products returned to HXI shall be shipped freight prepaid and Customer shall bear all costs and the risk of loss or damage to the Product until its arrival at HXI's designated service facility. HXI will prepay standard return freight charges on repaired and replaced Products found to be defective to Customer's shipment address for US addresses, or to the designated port of destination for shipments outside the US, with Customer responsible for clearance of customs, warehousing and inland transportation.

**5.3 Replacement Product.** The Hardware Warranty Period of repaired or replaced Product (whether new or refurbished) shall commence upon the Delivery of the repaired or replacement Product and shall expire on the later of (i) ninety (90) days after such Delivery or (ii) the last day of the original Hardware Warranty Period with respect to the Product which was repaired or replaced. All replaced Product shall become the property of HXI.

**5.4 Customer Representations and Covenants.** Customer warrants and covenants that: (a) Customer will comply with all applicable laws; and (b) Customer will not disassemble and/or reverse engineer any Product furnished hereunder except only if and to the extent required by applicable international law.

**5.5 Limitation on Warranty.** HXI warranties are void if: (a) the Product is integrated or assembled by Customer with other products, in conflict with HXI Specifications; (b) the Product is wired, repaired, disassembled or altered by anyone other than an authorized representative of HXI in strict accordance with the applicable Specifications; (c) the Product is used in violation of HXI Specifications or subjected to misuse, neglect, accident or abuse.

**5.6 EXCLUSION OF CERTAIN WARRANTIES.** THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE..

**5.7 Compliance with Laws.** The Products are approved and appropriately certified under applicable federal laws or standard bodies of the United States. Customer is responsible for obtaining certification or approvals under any non-United States law or standards body for operation and use outside the United States.

### SECTION 6 - INDEMNIFICATION

**6.1 Indemnification.** HXI shall indemnify and hold harmless Customer from liabilities resulting from any third party claims ("Claims") (a) for personal injury, death or tangible property damage arising out of the negligent design or manufacture of the Products or (b) that the Product(s) infringe another party's U.S. patent, copyright, trade secret, or U.S. trademark rights. Notwithstanding the foregoing, HXI shall not be liable for and Customer shall indemnify and hold harmless HXI from any and all liabilities resulting from Claims arising out of the operation of Customer's business, improper use of the Products or Services, removal of safety labels, or improper installation of the Products.

**6.2 Procedure.** The Party seeking indemnity, after receiving notice thereof, shall promptly advise the indemnifying Party of any such Claim and cooperate with the indemnifying Party in the defense of the indemnifying Party's expense. In the event HXI believes that any Claim for infringement may be successful, HXI shall, at no additional cost to Customer, either: (a) procure for Customer the right to continue using the Product(s) subject to such Claim; or (b) replace or modify the Product(s) so that they are no longer subject to any such Claim. If HXI cannot, after exercising reasonable efforts, perform under subsection (a) or (b) above, Customer shall return the Product(s) that are the subject of such Claim to HXI and HXI shall, at HXI's option, provide Customer with a replacement product of equal or greater functionality

as the returned Product or refund Customer the Purchase Price for the Product subject to such Claim.

**6.3 Indemnity Exclusions.** The obligations of HXI hereunder with respect to any Claim shall not apply if the Claim arises from use by Customer of a Product not in accordance with the applicable Specification(s), including but not limited to, combination with other products not provided or approved by HXI.

## **SECTION 7- LIMITATION OF LIABILITY**

**7.1 NO CONSEQUENTIAL DAMAGES.** NOTWITHSTANDING ANY PROVISION OF THIS ORDER TO THE CONTRARY, EXCEPT SECTION 6 OR CUSTOMER'S PAYMENT OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY, OR EITHER PARTY'S SUPPLIERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SHAREHOLDERS OR CONTRACTORS ("RELATED PARTIES"), BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS OPPORTUNITIES, LOST REVENUES, PROFITS OR DATA OR OTHER ECONOMIC LOSS) REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES AND/OR REGARDLESS OF WHETHER SUCH LOSSES WERE REASONABLY FORESEEABLE, ARISING FROM ANY CAUSE INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER ECONOMIC LOSSES.

**7.2 Statute of Limitations.** Any action for breach of this Order or to enforce any right hereunder shall be commenced within one (1) year after the cause of action accrues, or reasonably could have been discovered, or it shall be deemed waived and barred.

**7.3 LIMIT ON LIABILITY.** THE MAXIMUM LIABILITY OF HXI, AND ITS RELATED PARTIES, TAKEN AS A WHOLE, FOR ANY AND ALL CLAIMS IN CONNECTION WITH THIS ORDER, THE PRODUCTS, INCLUDING BUT NOT LIMITED TO CLAIMS FOR BREACH OF WARRANTY, BREACH OF CONTRACT, TORT, STRICT LIABILITY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, SHALL IN NO CIRCUMSTANCE EXCEED THE AGGREGATE AMOUNTS PAID TO HXI UNDER THIS ORDER.

**SECTION 8 - MISCELLANEOUS Applicable Law and Venue.** The validity, construction and performance of this Order shall be governed by the domestic laws of the State of Massachusetts, without giving effect to the principles of conflict of laws thereof. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Parties agree to the non-exclusive jurisdiction and venue of the State and Federal courts in Essex County, Massachusetts. **Assignment.** All the terms and provisions of this Agreement will be binding upon successors and permitted assigns of the Parties. **Non-Waiver.** The failure by either Party hereto at any time to require performance by the other Party or to claim a breach of any provision of this Agreement shall not be construed as affecting any subsequent right to require the performance or to claim a breach with respect thereto. **Force Majeure.** If the performance by a Party of any of its obligations under this Agreement (other than payment obligations) shall be interfered with by reason of any circumstances unforeseeable, irresistible and beyond the reasonable control of that Party, then that Party shall be excused from such performance while such circumstances exist and such additional period as may be reasonably necessary to allow that Party to resume its performance. **Severability; Cumulative Remedies.** Any provision of this Agreement that is unenforceable shall not cause any other remaining provision to be ineffective or invalid. Except as expressly set forth herein, the rights and remedies of the Parties will not be exclusive and are in addition to any other rights or remedies of the Parties existing in law or in equity. **English Language.** This Agreement and all documents given under it shall be written in English language. In the event of inconsistency between any translated version and the English version, the English version shall control. **Modification of Order.** Except as set forth herein, no addition to or modification of this Agreement shall be binding on either of the Parties hereto unless reduced to writing and executed by an authorized representatives of each of the Parties. **Entire Agreement.** This Agreement comprises all the terms, conditions and agreements of the Parties hereto with respect to the subject matter hereof and supersedes all previous negotiations, proposals, or agreements of any nature whatsoever. **Survivorship.** All provisions of this Agreement that reasonably may be interpreted or construed as surviving termination shall survive the termination. **Counterparts.** This Agreement may be executed in multiple facsimile or original counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. **Notices.** Any notice or other communication under this Agreement given by any Party to any other Party will be in writing and will be deemed properly given when sent to the intended recipient by certified letter, receipted commercial courier or electronically receipted facsimile transmission to the respective addresses or facsimile number shown on the Order. Any Party may from time to time change such address or individual by giving the other Party notice of such change in accordance with this Section. **Foreign Country Specific provisions.** If the shipment destination is outside the United States, the Country Specific provisions on Attachment A (if Attachment A is included) are by this reference incorporated into this Agreement. **Export Control.** Customer acknowledges that any Products provided under this Agreement are subject to U.S. export laws and regulations, including but not limited to the Export Administration Regulations, International Traffic in Arms Regulations and sanctions regulations of the US Department of Treasury, Office of Foreign Assets Control, and any use or transfer of such Products must be authorized under those regulations. Customer agrees that it will not use, distribute, transfer, or transmit the

Products in violation of U.S. export regulations. If requested by HXI, Customer also agrees to sign written assurances and other export-related documents as may be required for HXI to comply with U.S. export regulations. Customer shall not, without prior US Government authorization, export, re-export or transfer any Products (i) to any country subject to a US trade embargo, or (ii) to any resident or national of such country, or (iii) to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the US Department of Commerce or the list of "Specially Designated Nationals and Blocked Persons" maintained by the US Department of Treasury, or (iv) to an end user engaged in activities related to weapons of mass destruction including but not limited to design, production or use of missiles, or chemical or biological weapons. Customer agrees to determine the precise controls applicable to Products, as they change from time to time, by referring to the EAR and OFAC's sanctions regulations, and at [www.bis.doc.gov](http://www.bis.doc.gov) and <http://www.ustreas.gov/offices/enforcement/ofac/>.

Notwithstanding the above provisions, HXI will obtain necessary US Export Licenses required in order to ship the Products to Customer.

