



## Terms and Conditions of Sales

1. **AGREEMENT.** All sales by Xiotech Corporation ("X-IO") of any non-software products ("Products") to the purchaser ("Customer"), and/or the sale or provision by X-IO to the Customer of any services ("Services") as specified in the associated quotation, order acknowledgement, or invoice from X-IO ("Order") shall be governed exclusively by these terms and conditions ("Terms"). X-IO OBJECTS TO AND HEREBY REJECTS ANY ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS PROPOSED BY CUSTOMER, INCLUDING THOSE CONTAINED ON ANY PURCHASE ORDER OR OTHER DOCUMENTATION PROVIDED BY CUSTOMER. Customer's right to the Products and/or Services is contingent upon Customer's acceptance of these Terms. Any changes to the Terms must specifically agreed to in a writing executed by X-IO and Customer before becoming binding on either party. To the extent a conflict or inconsistency exists between these Terms and any document submitted to X-IO by Customer, these Terms will control.

2. **LICENSE FOR FIRMWARE.** If Customer has purchased Products that include preinstalled firmware ("Firmware"), then this Section 2 shall apply. Subject to these Terms, X-IO grants to Customer a non-exclusive, non-transferable license to use Firmware solely in connection with Customer's use of the Products. Customer may not modify, reproduce, decompile, reverse engineer or transfer Firmware without X-IO's prior written consent. Purchase by Customer of licenses to X-IO software products other than Firmware shall be governed by the terms of a separate End User License Agreement associated with the Order.

3. **WARRANTY FOR PRODUCTS.** If Customer has purchased Products, then this Section 3 shall apply. Unless otherwise provided on the associated Order or otherwise agreed to in writing by authorized X-IO personnel, X-IO warrants that X-IO branded Products sold by X-IO will be free from defects in material and workmanship for 5 years from the date X-IO ships the Product and that Firmware will perform substantially in accordance with its documentation for a period of 90 days from such date; provided, however, that with regard to third party branded Products sold by X-IO to Customer, X-IO shall pass through to Customer the original manufacturer's warranty to the extent permissible. X-IO's warranty shall not apply to any Products that are not installed or operated in conformity with X-IO's published instructions, or to any Products which have been subject to misuse, negligence, or accident, or altered or repaired by anyone other than X-IO or X-IO's duly authorized agent. In all cases, X-IO has sole responsibility and discretion for determining the cause and nature of a Product defect, and X-IO's determination with regard thereto shall be final. Customer must notify X-IO of any breach of warranty within the applicable warranty period. The exclusive remedy for any breach of warranty shall be, at X-IO's option, the repair of the Product or replacement of such Product with a Product of the same type, or the refund of the purchase price for such Product. When notifying X-IO of or returning any Products that fail to meet an applicable warranty, Customer shall comply with X-IO's then-current Return Material Authorization procedure. Customer hereby assigns to X-IO ownership of, any part, component, or item removed from a Product by X-IO under these Terms for any reason. CUSTOMER ACKNOWLEDGES THAT IN THE EVENT PRODUCTS ARE SPECIFIED AS USED OR RECONDITIONED, THE WARRANTIES OFFERED BY X-IO MAY BE LESS PROTECTIVE THAN THE WARRANTIES OFFERED FOR NEW PRODUCTS OF THE SAME KIND.

4. **WARRANTY FOR SERVICES.** If Customer has purchased Services, then this Section 4 shall apply. X-IO warrants that the Services will be performed in a workmanlike manner. Customer's exclusive remedy for a breach of this warranty is for X-IO to re-perform the Service at no extra charge. Customer must notify X-IO of any breach of this warranty within 30 days of the date of the provision of the non-compliant Services. Installation services do not include data migration services. X-IO will maintain industry standard commercial general liability insurance and will defend, indemnify and hold harmless Customer from any suit, claim or action and related costs and

expenses arising from personal injury or property damage to the extent caused by X-IO in connection with performance of Services.

5. **DISCLAIMER OF WARRANTY.** THE EXPRESS WARRANTIES IN SECTIONS 3 AND 4 ABOVE ARE MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. X-IO DOES NOT MAKE, AND HEREBY DISCLAIMS, ALL WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 3, NO WARRANTIES ARE MADE BY ANY OF X-IO'S LICENSORS OR SUPPLIERS. No agent, representative or employee of X-IO has any authority to make any representations or warranties on behalf of X-IO.

6. **LIMITATION OF LIABILITY.** X-IO'S TOTAL LIABILITY ARISING FROM THE PRODUCTS AND/OR SERVICES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHERWISE, IS LIMITED TO THE AMOUNT CUSTOMER PAID FOR THE PRODUCTS AND/OR SERVICES FOR WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT SHALL X-IO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, OR LOST PROFITS, ARISING OUT OF OR RELATED TO THE PRODUCTS AND/OR SERVICES, REGARDLESS OF WHETHER X-IO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING OUT OF DESIGN OR MANUFACTURING DEFECT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, DEFAULT, INDEMNITY OR ANY OTHER REASON OR LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF ITS PRODUCTS OR ITS PERFORMANCE UNDER THESE TERMS. NO ACTION RELATING TO THE PRODUCTS AND/OR SERVICES MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER DELIVERY OF THE PRODUCTS OR COMPLETION OF THE SERVICES.

7. **DELIVERY OF PRODUCTS; TITLE.** All purchase orders submitted by Customer may be accepted or rejected by X-IO, in its sole discretion. Accepted orders for X-IO branded Products are non-cancellable. Delivery and completion dates are estimates; X-IO will use commercially reasonable efforts to meet desired delivery and completion dates, but will not be liable to Customer in any way for any late shipment or completion. Delivery requests not conforming to X-IO's lead times are subject to expedite fees. X-IO shall not be responsible for any delays caused by strike, flood, fire, act of God, scarcity of the materials needed to produce the Products or complete the Services, governmental restrictions, or any other cause beyond the reasonable control of X-IO. Where applicable, Customer will accept and pay for partial shipments of Products or performance of Services. Unless otherwise provided on the Order, the Products shall be delivered for domestic shipments in the continental U.S.A. FOB shipping point and international shipments will be EXW shipping point (Incoterms 2010) and title to Products shall pass to Customer in accordance therewith.

8. **USE OF PRODUCTS.** Customer shall use Products only for its own business purpose and not for resale or distribution. Customer shall indemnify X-IO against all claims, losses, damage, injury, or other liability arising out of or related to unauthorized or unintended use of the Products, whether separately or as incorporated into any of the Customer's products or services.

9. **PURCHASE PRICE; PAYMENT TERMS.** Quoted prices for Products or Services are binding on X-IO only if in writing submitted by X-IO. All Products are invoiced upon shipment and all Services are invoiced upon completion. Terms of payment are net 30 days from the date of invoice, unless otherwise expressly provided for and confirmed in writing by X-IO. Notwithstanding any specified payment terms, X-IO may require payment in advance of shipment of Product or commencement of repair services if Customer's credit, in X-IO's sole judgment, becomes impaired. The purchase price shall become immediately due and payable and X-IO may cancel any unfilled portion of a shipment or uncompleted Service upon Customer's failure to make

any payment when due. Overdue payments shall be subject to finance charges computed at a periodic rate of the lesser of the maximum allowed by applicable law or 1 1/2% per month). Customer, at its expense, shall fully insure Products against all loss or damage until the purchase price has been paid in full. Unless otherwise provided on the Order, the purchase price is exclusive of, and Customer is responsible for, all sales, value added, use and like taxes and any applicable customs duties, import licenses, excise fees or tariffs. X-IO will invoice Customer for all applicable taxes unless Customer supplies an appropriate and valid tax exemption certificate.

10. PURCHASE MONEY SECURITY INTEREST. If Customer has purchased Products, then this Section 10 shall apply. X-IO hereby reserves, and Customer hereby grants to X-IO, a purchase money security interest ("PMSI") in the Products sold hereunder and all the proceeds thereof, including but not limited to, insurance proceeds, to secure performance of all of Customer's obligations hereunder. Customer's failure to pay any amount when due shall give X-IO the right to repossess and remove the Products. Customer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments as X-IO may reasonable request in order to perfect X-IO's PMSI and shall not object to X-IO's filing of such instruments.

11. PROPRIETARY INFORMATION; IP. X-IO may provide confidential or proprietary information to Customer in connection with the Products or Services ("CI"). Customer agrees that CI shall include all information which Customer knows or reasonably may know is confidential. CI shall remain the exclusive property of X-IO and Customer must not disclose CI to any third-party and will preserve and protect the confidentiality of CI by using at least reasonable care and Customer will take all other acts reasonably requested by X-IO with respect to CI. Upon X-IO's request, Customer will return to X-IO all documents containing X-IO's proprietary information. Customer agrees that its obligation to protect X-IO's proprietary information shall be ongoing and shall not cease upon completion or termination of these Terms. Nothing in this Agreement grants to Customer any right, title, or interest in any of X-IO's intellectual property including without limitation patents, trademarks, trade names, logos, inventions, copyrights, know-how, or trade secrets in any way relating to the design, manufacture, operation, use or service of the Products.

12. INDEMNIFICATION. X-IO will defend, indemnify and hold harmless Customer from any third-party claim made against Customer for infringement of any United States patent, copyright, or trademark by the Products, provided that Customer (i) promptly notifies X-IO of any such claim; and (ii) gives X-IO all information, authority and assistance reasonably necessary to settle and/or defend any such claim. X-IO will have sole control of any such claim, including, in its sole discretion and at its own expense, the right to settle the claim. X-IO has no liability for any claim arising or alleged to arise from use of a Product as part of any equipment, software, assembly, combination, method or process not supplied by X-IO, or for any claim, suit or proceeding arising or alleged to arise from: (i) any marking or branding applied to a Product at the request of Customer or by a party other than X-IO; or (ii) modification or servicing of all or part of a Product at Customer's request or by any party other than X-IO (except as expressly authorized by X-IO in writing). This Section 12 states the entire liability and obligations of X-IO, and the exclusive remedy of Customer, with respect to any actual or alleged infringement of any United States patent, copyright, trademark and/or other intellectual property right by the Products, Services or any part thereof.

13. ADVICE; ENGINEERING CHANGE ORDERS. X-IO may provide Customer technical advice regarding the Products and Services, but X-IO does not warrant or guarantee such advice. X-IO reserves the right to make additional engineering changes as necessary, and to charge Customer for costs and expenses incurred by X-IO associated with any servicing or repair of a Product or component for which there is no problem observed (NPO), regardless of whether the Product is returned to X-IO for repair or X-IO deploys resources to make the repair.

14. SPECIAL ORDERS. Customer acknowledges that if this purchase is a special order for custom goods, the provisions of this paragraph supersede any conflicting general terms of these Terms. Customer agrees to defend, protect, and hold harmless X-IO against all suits at law or in equity and from any and all damages, claims, and demands for personal injury or actual or alleged infringement of any United States or foreign intellectual property right and to defend any suit or actions which may be brought against X-IO for such injury and/or any alleged infringement because of the manufacture and/or sale of the custom good.

15. EXPORT; COMPLIANCE WITH LAW. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin. Customer will not export or re-export the Products or any related technical documentation in any form in violation of the export or import laws of the United States or any foreign jurisdiction. Customer shall not, without U.S. government authorization, export, re-export, or transfer any goods, software, or technology subject to these Terms, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. Customer and its personnel, agents and representatives agree to abide by the obligations imposed by the laws of the countries in which Customer does business (including, without limitation, the Foreign Corrupt Practices Act) regarding payments or gifts to governments or related persons for the purpose of obtaining or retaining business. Customer will defend, indemnify, and hold harmless X-IO from and against any violation of such laws or regulations by Customer or its agents, officers, directors, or employees.

16. LAW; VENUE. These Terms will be governed by the laws of the State of Colorado as applied to agreements between Colorado without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer shall only bring an action arising from or relating to these Terms in a federal court in Denver, Colorado or in state court in Colorado Springs, Colorado, and Customer irrevocably submits to the personal jurisdiction and venue of such court in such action or in any action brought in such courts by X-IO. Customer irrevocably consents to the service of process from any of the aforesaid courts by mailing copies thereof by registered or certified mail, postage prepaid, to Customer at its address designated pursuant to these Terms, with such service of process to become effective fifteen (15) days after such mailing. Customer agrees to pay X-IO's reasonable attorney's fees and costs required to enforce X-IO's rights hereunder. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms.

17. GENERAL. No waiver of rights under these Terms by either party shall constitute a subsequent waiver of this or any other right under these Terms, and all waivers must be in writing to be effective. Neither these Terms nor any rights under these Terms shall be assigned or otherwise transferred by Customer (by operation of law or otherwise) without the prior written consent of X-IO and any unauthorized transfer or assignment shall be void. These Terms shall bind and inure to the benefit of the successors and permitted assigns of the parties hereto. In the event that any of the terms of these Terms are held to be illegal by any court of competent jurisdiction, all remaining terms of these Terms shall remain in full force and effect. These Terms together with X-IO's associated Orders (if applicable) constitute the entire understanding and agreement between the parties regarding the subject matter hereof and supersede all prior or contemporaneous understandings, written or oral. In the event the terms of a Order contain additional or different terms than these Terms, the terms of the Order will govern and control. These Terms may only be amended by a written document signed by both parties.