

## **XTEK STANDARD TERMS AND CONDITIONS OF SALE - INTERNATIONAL**

All sales by Xtek are subject to the following terms and conditions. All proposals, quotations or acknowledgments issued by Xtek are an offer to sell products or services pursuant to these terms and conditions. Xtek objects to any additional or different terms contained in any documentation submitted by Customer. Xtek's acceptance of any order is contingent upon Customer's assent to these terms and conditions. No waiver or modification of these terms and conditions shall be binding on Xtek unless authorized in writing by Xtek.

**PRICES/TAXES.** Prices are subject to escalation in the event of an increase in material related costs. The minimum charge for any order will be \$300. Unless otherwise stated or agreed, Xtek's prices do not include freight charges or sales, use, duties or similar taxes or fees.

**PAYMENT TERMS.** Unless otherwise agreed, all export sales are made on the condition that prior to shipment the Customer open an irrevocable letter of credit under terms and conditions acceptable to Xtek or establish satisfactory credit with Xtek. At Xtek's option, export orders may be subject to special export payment terms and quotations. For all orders greater than \$50,000, progress payments will normally be required as specified in the quotation. All payments must be in U.S. dollars. If an open account Customer fails to make full and timely payment, Xtek may defer shipment of other orders, or may cancel all or any part of any unshipped order until such payment is made.

**LIMITED WARRANTY.** New products sold by Xtek will conform to the applicable Xtek product specifications or any Customer specifications agreed to in writing by Xtek and will be free from defects in material and workmanship under normal use, service and environmental conditions for one year from the date of start-up or eighteen months from the date of shipment of the product, whichever occurs first. Services or repairs performed by Xtek on all other products will be of good, workmanlike quality and be free from defects in materials and workmanship for one year from first use of the equipment that has been serviced or repaired or eighteen months from the date of shipment, whichever occurs first. For products not originally manufactured by Xtek, Xtek makes no warranty that the design of the product either before or after alteration, repair, or modification complies with applicable design standards for such products. Customer is responsible for inspecting and testing such products in accordance with applicable safety standards after alteration, repair, or modification by Xtek. Should Customer elect not to implement the full scope of repairs or services recommended by Xtek, Xtek makes no warranty and assumes no liability for any subsequent failure of such item, part or assembly. Xtek makes no other warranty, express or implied, **INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** The above Limited Warranty shall not apply to (1) any Customer supplied part or material; (2) Customer parts which are inspected by Xtek and returned without service or repair; or (3) any product that has been subjected to misuse, neglect or accident.

**REMEDY FOR BREACH OF THE LIMITED WARRANTY.** Xtek will repair or replace any defective product or re-perform repairs or service on any item, part or assembly that was defectively performed. If the defective product or service cannot be replaced or repaired within a reasonable period of time, Xtek will provide a credit adjustment based on the purchase price of the product or cost of repair. Repair or replacement of defective products or services shall be Xtek's sole liability for breach of this Limited Warranty.

**LIMITATION OF LIABILITY.** Xtek's liability for a claim of any kind arising out of the manufacture, sale or use of any Xtek product or service shall in no case exceed the purchase price paid by Customer. In no event shall Xtek be liable to Customer for any special, indirect, incidental or consequential damages, however caused, arising from the sale of products or services pursuant to this Agreement.

**DELIVERY/FORCE MAJUERE.** All sales are Ex Works, Xtek's plant, Cincinnati, Ohio, USA (INCOTERMS 2000), unless otherwise agreed in writing. Delivery dates are estimates and are predicated on conditions existing at the time made. Xtek shall have no liability for shipment delays, breach of contract obligations, or damage to customer furnished material that result from an Act of God, war, riot, explosion, accident, act of government, work stoppage, default of subcontractor or supplier of materials, or any other cause beyond the reasonable control of Xtek. Acceptance of goods upon delivery shall be a waiver by Customer of any claim for damages on account of delays in delivery or performance.

**CANCELLATION, SUSPENSION OR DELAY.** Customer may cancel an order upon written notice to Xtek and payment of an agreed upon cancellation charge, which shall include all costs incurred by Xtek prior to the cancellation plus a reasonable profit. A purchase order may be suspended or delayed by Customer with Xtek's prior written consent. If Xtek agrees to a suspension or delay, Customer shall reimburse Xtek for all costs incurred up to the date of such suspension or delay, plus a reasonable profit. All other costs related to and risks incidental to storage, disposition and resumption of work shall be borne by Customer.

**CHANGES.** If Customer requests a change in a specification or design relating to any ordered product or any other modification or alteration to the order, the delivery schedules may be revised as necessary and an equitable adjustment may be made in the price if warranted.

**XTEK'S PROPERTY.** Except as otherwise specifically set forth in the scope of work provided as part of the proposal or quotation, all documents, including drawings, specifications, computer files, electronic media, data, engineering calculations, notes, and other documents and instruments prepared or furnished by Xtek (collectively the "Documentation") are the property of Xtek. Xtek shall retain all common law, statutory and other reserved rights, including copyright, applicable to the Documentation. The Documentation is not intended or represented to be suitable for use on any other project. Any reuse of the Documentation without written verification or adaptation by Xtek for the specific purpose intended is prohibited and will be at Customer's sole risk and without liability or legal exposure to Xtek. Customer agrees to defend, indemnify and hold Xtek harmless against all claims, damages, losses, and expenses (including reasonable attorneys' fees) arising from or in any way connected with the unauthorized use or modification of the Documentation by Customer or any person or entity that acquires or obtains the Documentation from or through Customer without the written authorization of Xtek.

**CUSTOMER'S PROPERTY.** Prices and delivery of products for which the Customer furnishes material, patterns or tools are based on these items being received within the agreed time and in the quantities and conditions specified. Xtek assumes no liability or responsibility for loss or damage, from any cause whatsoever, to Customer owned materials or parts delivered to Xtek for processing.

**INDEMNITY.** Xtek will defend and indemnify Customer from any claims for bodily injury or death arising out of the use of the products or services provided by Xtek under this Agreement that occur as a result of the sole negligence or willful misconduct of Xtek. In no event shall

Xtek be liable under this provision for claims arising out of the negligence or willful misconduct of Customer or its employees or agents. Customer agrees to defend and indemnify Xtek for any claims arising out of the noncompliance with applicable safety standards by Customer or its employees or agents.

**PATENT INDEMNITY.** Unless the design or specification for the product is being furnished by Customer, Xtek will defend any suit or proceeding brought against Customer which alleges that Xtek's products, when employed in the manner intended by Xtek, constitutes an infringement of any previously issued US patent, provided that Xtek is notified promptly in writing of the claim and given authority, information and assistance for the defense of same. Xtek shall pay all damages and costs awarded against Customer as a result of such claim. If the product is held to constitute an infringement and its use in the manner intended by Xtek is enjoined, Xtek shall, at its expense, procure the right to continue using the product; replace it with non-infringing product; modify it so it becomes non-infringing; or remove it and refund the purchase price. In no event will Xtek be liable if the infringement is based on the use of the product for a purpose other than that for which it was sold by Xtek or based on a combination of the product with other products.

**ASSIGNMENT.** Customer may not assign the contract between Xtek and Customer without the prior written consent of Xtek.

**GOVERNING LAW.** The relationship between Customer and Xtek shall be governed by the laws of the State of Ohio, United States of America. The provisions of the Uniform Commercial Code as adopted by the State of Ohio, and not the United Nations Convention on Contracts for the International Sale of Goods, shall apply.

**DISPUTE RESOLUTION.** All claims or disputes of any kind arising out of the relationship between Customer and Xtek shall be finally settled by arbitration in Cincinnati, Ohio, USA, under the Rules of Arbitration of the International Chamber of Commerce, Paris by one or more arbitrators appointed in accordance with said Rules applying these Terms and Conditions of Sale and consistent provisions of the laws (except conflict of law rules) of the State of Ohio, USA. The language to be used in the arbitration proceeding shall be English. The prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees.

**EXPORT CONTROL.** In the event that U.S. or local law requires export authorization for the export or re-export of any Xtek product or associated technology, no delivery can be made until such export authorization is obtained, regardless of any otherwise promised delivery date. In the event that any required export authorization is denied, Xtek will be relieved of any further obligation relative to the sale and/or license and delivery of the product(s) subject to such denial without liability of any kind relative to Customer or any other party. Xtek will not comply with boycott related requests except to the extent permitted by U.S. law and then only at Xtek's discretion.