

Terms and Conditions

1. **The Contract:** Xerxes, a division of Mattr Corp., and/or Xerxes Corporation, as applicable to the Order ("Xerxes" or the "Company") hereby confirms a contract to sell the products and/or services, described herein (as the "Work" or "Goods") and "Order" exclusively in accordance with these Terms and Conditions, unless there is an active master agreement between Company and Customer that covers the type of Work or Goods at issue. This document together with any exhibits or other documents which Company has attached or referenced herein (collectively, the "Contract"), shall constitute the sole and complete agreement between the parties concerning the sale of the Work. Company expressly objects to and rejects any additional or different terms in any document previously or hereafter received from Customer. Acceptance by Customer of any Order Acknowledgement furnished by Company or shipment or completion of an Order by Company shall be deemed a full and unconditional acceptance by Customer of all terms and conditions set forth herein. Company may revise and post updates to these Terms and Conditions from time-to-time, and all Order(s) shall be subject to the most recently posted version of these Terms and Conditions.
2. **Pricing/Payment:** The price of any Work that has not shipped within sixty (60) days of receipt of the Order from Customer shall be subject to increase by Company. All invoices are payable within thirty (30) days from the date issued by Company. Where the parties have entered into progress payment terms, Company shall issue invoices, and Customer shall make payments upon each milestone achieved. If Customer fails to make any payment on the due date and such default continues for five (5) days after written demand is issued by Company, then without prejudice to any other right or remedy available to Company, Company shall be entitled to any or all of the following actions; (a) cancel the Order or suspend any further Work to Customer; (b) set-off against the amount unpaid by Customer or any of its affiliates any sums due or accruing to Customer or any of its affiliates from Company pursuant to any agreement between Company and Customer or any of their respective affiliates, whether executed before or after the date hereof; and (c) charge Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per month, or the maximum rate permitted under applicable law, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). Customer is subject to a cancellation and restocking charge of up to one hundred percent (100%) of the Customer's Order if Customer cancels the Order less than fourteen (14) days from the manufacturing start date of the Order's products. Where third party, long lead, or special-order items are required for Customer's Order, restocking charges shall apply at the time Company orders such items.
 - 2.1 If, in Company's sole judgment, Customer's financial condition or other circumstances cause Company to be insecure with respect to Customer's performance of any obligation or duty under this Contract, Company may (a) cancel this Contract, (b) revoke or change any terms of credit previously granted, (c) suspend production, delivery or any other performance until Customer makes payment or provides other adequate assurances of performance, or (d) exercise any other rights provided by law. In the event of a default hereunder by Customer, Customer shall reimburse Company for all damages suffered and costs incurred as a result of Customer's default including, but not limited to, all collection costs and reasonable legal fees.
 - 2.2 Company reserves the right, by giving notice to Customer at any time before delivery or performance, to increase the price of the Work to reflect any increase in the cost to Company which is due to any factor beyond the control of Company, such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities, or specifications for the Work which is requested by Customer, or any delay caused by any instructions of Customer, or failure of Customer to give Company adequate information or instructions.
 - 2.3 Any taxes, duties, government levies, tariffs, or other charges which Company may be required to pay or collect under any existing or future law upon or applicable to the sale, purchase, lease, furnishing, manufacture, processing, transportation, delivery, storage, use or consumption of the Work shall be for the account of Customer.
3. **Disclaimers:** In proceeding under the Order, Customer acknowledges and agrees that it has performed a technical review of the Work, any testing results, and performed any such other review required to confirm that the Work is suitable for Customer's intended use. Testing data provided by Company to Customer is for Customer's technical review to determine the suitability of the system or products supplied by Company. Customer agrees that Company shall not be liable for damage to or destruction of the Customer's material and/or equipment occurring while such material and/or equipment is in possession of Company for testing, storage, or servicing.
 - 3.1 Company reserves the right to make changes to the products where required to conform with any applicable statutory requirements or which do not materially affect their quality or performance.
 - 3.2 Work shall be subject to Company's stated manufacturing variations and all tables published by Company are based upon information that is believed to be reliable; however, all measurements and weights set forth in such tables are subject to reasonable tolerance variations.
4. **Intellectual Property/Confidentiality:** Company retains all proprietary rights to the designs, engineering details, and data related to the Work it sells. Except to the extent necessary for the maintenance or repair thereof, Customer shall not (and shall not direct or permit any third party to) disassemble any Company product(s), or decompile, analyze or otherwise seek to reverse engineer any Company product(s) (or any component part thereof) in an effort to discover its design, structure, construction, or formulation, or the firmware used or embedded therein. All non-public information, including pricing, discounts, and any negotiated terms of sale, provided by Company in connection with this Order is confidential and proprietary to Company and shall not be divulged by Customer, its employees, agents, representatives or contractors to any person or entity other than persons designated by Company in writing. Customer shall be liable for any breach of the foregoing by its employees, representatives, agents, or contractors.
5. **Delivery:** All products are sold and delivered in accordance with INCOTERMS 2020 EXW at Company's facility (the "Delivery"). Notwithstanding Delivery, Company shall have a Security Interest as defined herein to the products until such time as Company has received payment in full (in cash or cleared funds) of the price of the Work for which payment is then due. Company will use its best efforts in good faith to deliver the Goods on or before the agreed Delivery date. Time for delivery shall not be of the essence. Where Work is to be delivered in instalments, failure by Company to deliver any one or more of the instalments in accordance with the Order or any claim by Customer in respect of any one or more instalments shall not entitle Customer to treat the Contract or the Order as a whole as repudiated. Upon Customer's request, Company may assist Customer with shipment of Goods at Customer's cost. Upon such request Company may select the carrier and provide such carrier with reasonable shipping instructions, however such carrier shall be deemed Customer's agent for Delivery and all other purposes. Carrier's acceptance of products shall constitute Delivery to Customer.
6. **"Security Interest":** means a purchase money or other security interest, together with (i) all accessions to, substitutions and replacements for the Work, (ii) all proceeds of any and all of the Work, (iii) all accessories, attachments, parts, equipment, and repairs now or hereafter attached or affixed or used in connection with or hereafter attached or affixed or used in connection with any of the foregoing Work, and (iv) all warehouse receipts, bills of lading, and other documents of title now or hereafter covering any of the foregoing Work. Company hereby retains and Customer hereby grants to Company, a Security Interest in the Work until Customer has made payment in full for the Work and satisfied all of its obligations to Company herein. Customer shall execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings that Company may at any time reasonably request in order to secure, protect, perfect or enforce the Security Interest and Company's rights under the Contract. Company shall have all of the rights of a secured party with respect to the Work under the UCC and other applicable laws. Upon Customer's default of any payment obligation, in addition to other rights and remedies it may have under law and equity, Company may exercise in respect of the Work all the rights and remedies of a secured party on default under the UCC, including, without limitation, the right to enforce the Security Interest, to retake possession of the applicable Work and to collect directly from any

account obligor all amounts due Customer with respect to such Work.

7. **Storage:** If the Customer fails to receive Delivery of any products hereunder then, without prejudice to any other right or remedy available to Company, Company may invoice Customer at such time, and either store the products until actual receipt of products and charge Customer for reasonable costs of storage (including administrative costs in respect thereof), or where Company has not issued an invoice, sell the products at the best price readily obtainable and (after deducting all reasonable storage, administrative and selling expenses) account to the Customer for the excess over the price in the Order Acknowledgement or charge Customer for any shortfall below the price in the Order Acknowledgement. Company will charge Customer a monthly storage fee for any products stored on Company premises past the failed Delivery date. Monthly storage fees will be based on the Xerxes Storage Fee Schedule, a copy of which is available upon request. Goods storage expires one (1) year from the Delivery date (the "Storage Period"), upon expiry of the Storage Period, Company may at its sole option require that the Customer immediately take delivery of the Goods, or Company may destroy the Listed Goods at Customer's sole expense, or sell the Goods to another customer without further notice to, or consent from the Customer. If Customer fails to take delivery within the Storage Period, such failure shall result in a forfeiture of Customer's title, rights, and interests in the Goods back to Company. Company shall have no obligation to replace the Goods or refund Customer's purchase price.
8. **Compliance with Laws:** Customer shall comply with all applicable laws, rules, regulations, ordinances, judgments, orders, and other official acts related to the Order. Customer will comply with laws and regulations applicable to the Order pertaining to trade embargoes and economic sanctions, export control, anti-boycott, cargo security, import classification and valuation, product/country of origin marking, as well as trade agreements and regulations. **CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY AND ITS AFFILIATES, SUBSIDIARIES AND ITS AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM LOSS, COST, DAMAGE, EXPENSE OR LIABILITY ARISING OUT OF CUSTOMER'S USE OF THE WORK, NON-COMPLIANCE WITH ITS OBLIGATIONS TO COMPLY WITH LAWS, RULES, REGULATIONS, ORDINANCES, JUDGMENTS, ORDERS AND OTHER ACTS APPLICABLE TO THE ORDER.**
9. **Warranty:** Subject to the limitations set forth herein, upon complete payment of total invoice for the products and services by the due date, Company warrants the products and services sold by it in accordance with Xerxes' applicable Limited Warranty ("Limited Warranty") and is available upon request, the terms thereof are incorporated herein by reference. Xerxes' Limited Warranty constitutes Company's only warranty or representation, express or implied, with respect to the Work sold hereunder, or any service, advice, or consultation, if any, furnished to the Customer by Company or its representatives. Company shall not be liable for any cosmetic deterioration to Goods or products in storage and such cosmetic deterioration is not covered under Xerxes' applicable Limited Warranty. **THE REMEDIES SET FORTH IN THE XERXES LIMITED WARRANTY ARE THE ONLY REMEDIES AVAILABLE TO ANY PERSON OR ENTITY FOR ANY CLAIM RELATING IN ANY MANNER TO THE WORK. IT IS EXPRESSLY AGREED THAT THIS WARRANTY SHALL BE IN LIEU OF ANY OTHER WARRANTY, EXPRESSED, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. TO THE FULL EXTENT ALLOWED BY LAW, COMPANY DISCLAIMS ANY WARRANTY TO ANY PERSONS OTHER THAN CUSTOMER.**

Distributors: Any distributor, or other person or entity (collectively "Distributor") that purchases Company's products for resale must include and forward a copy of the Xerxes applicable Limited Warranty as part of its contract of sale with any subsequent buyer of the products ("Remote Purchaser"). Distributor shall require that its Remote Purchaser continue the flow down of this contractual requirement through each Remote Purchaser, such that the end user ("Owner") receives the Xerxes applicable Limited Warranty. Distributor shall offer the products for sale only with Xerxes' applicable Limited Warranty. Distributor shall make no other direct or indirect representations or warranties, express or implied, on behalf of Company except as specifically authorized in writing by Company. Distributor shall, at its own expense, hold harmless and indemnify Company for any expenses, legal fees, claims, suits, judgments, damages or liabilities of any nature whatsoever arising out of unauthorized representations or warranties regarding Company's products made by Distributor.

The foregoing warranty excludes;

- a. statements, recommendations, assistance, and opinions, specifications, catalogues, product bulletins, price lists, advertisements, and technical data given by Company or its representatives, and shall neither constitute a waiver or modification of any of the Company's warranty obligations or create any liability for Company. All such information, though believed to be reliable, is furnished, and the products are sold, with the understanding that Customer shall be solely responsible for performing technical reviews to ascertain the suitability of Company's products for Customer's intended use,
 - b. products or services that have been subject to misuse, negligence, accidents, modification, heating, bending, welding, any alteration, or have not been operated or installed in accordance with Company's instructions, or have been operated under conditions outside of, or otherwise exceeding, the published specifications for the product or service,
 - c. services not performed directly by Company's employees, or its designate, and
 - d. parts, materials, and equipment not manufactured by Company, however the Customer shall be entitled to the benefit of any such warranty or guarantee given by the manufacturer to Company.
10. **Limitations:** Notwithstanding anything to the contrary, in no event shall Company be liable for special, indirect, incidental or consequential damages including loss of profits, environmental damage, remediation claims or third party costs including, but not limited to, excavation, testing or removing products whether or not caused by the negligence or fault of Company, and whether or not arising under tort or statute or any liability provisions, and in no event shall Company's liability exceed the value of the Order Acknowledgement.
 11. **Non-assignment by Customer:** Customer shall not assign its rights or obligations under the Contract without the written approval of Company, however if so permitted, shall not relieve Customer of its duties or obligations hereunder.
 12. **INDEMNITY: CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS COMPANY AND ITS AFFILIATES, SUBSIDIARIES AND ITS AND THEIR OFFICERS, AGENTS, AND EMPLOYEES FROM LOSS, COST, DAMAGE, EXPENSE OR LIABILITY BY REASON OF DAMAGE TO THE PROPERTY OF CUSTOMER OR PERSONAL BODILY INJURY (INCLUDING DEATH) TO THE OFFICERS, AGENTS, OR EMPLOYEES OF CUSTOMER CAUSED BY, RELATED TO, OR ARISING DIRECTLY OR INDIRECTLY OUT OF THE WORK SOLD AND/OR FURNISHED HEREUNDER. SUBJECT ONLY TO LIMITATIONS IMPOSED BY APPLICABLE LAW OR PUBLIC POLICY, THE INDEMNITIES SET FORTH IN THIS CONTRACT ARE INTENDED TO BE ENFORCEABLE AGAINST THE PARTIES IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE THEREOF, NOTWITHSTANDING ANY STATUTE, RULE, OR DIRECTIVE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNITIES BECAUSE OF THE NEGLIGENCE OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PARTIES. THE INDEMNITIES SET FORTH IN THIS ARTICLE APPLY REGARDLESS OF WHETHER OR NOT THE CLAIM IS CAUSED BY THE SOLE, JOINT, CONTRIBUTORY OR CONCURRENT NEGLIGENCE (IN ANY AMOUNT), GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, STRICT LIABILITY, PRODUCT LIABILITY, BREACH OF WARRANTY, BREACH OF CONTRACT, BREACH OF STATUTE OR OTHER FAULT OR FORM OF LIABILITY OF ANY MEMBER OF COMPANY GROUP, CUSTOMER GROUP, OR A THIRD PARTY, OR ANY PRE-EXISTING CONDITION.**
 13. **"Force Majeure":** means any events or occurrences that are not within the reasonable control of Company including without limitation, acts of God, war, riot,

rebellion, act of terrorism, blockade, epidemic or pandemic, order or requirement of any government agency or authority, strike, lockout, or labor disruption, and Company shall be excused from the performance of its obligations to the extent that performance is prevented or delayed by such causes. Company shall not be held liable for any delay or failure to make delivery of all or any part of the Work as a result of Force Majeure and shall be entitled to a reasonable extension of time to counteract the effect of such event.

14. Disputes: In the event of any dispute or claim relating to this Contract or Order, Company and Customer shall first attempt to reach a settlement between themselves. Should it not be possible to reach a settlement within thirty (30) days, either party may elect to have the dispute referred to and finally resolved by the following courts for the resolution of any matter or dispute arising out of or relating to this Contract or the interpretation thereof;
- a. where the Work in dispute was Delivered in Canada, this Contract shall be governed by and is to be interpreted and enforced in accordance with the laws of the Province of Alberta, and each of the parties irrevocably attorns and submits to the exclusive jurisdiction of the courts of Alberta.
 - b. where the Work in dispute was Delivered in the USA, this Contract shall be governed by and is to be interpreted and enforced in accordance with the laws of the State of Texas, and each of the parties irrevocably attorns and submits to the exclusive jurisdiction of the courts, state or federal, sitting in Houston, Harris County, Texas, and TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ALL RIGHTS TO A JURY TRIAL WITH RESPECT TO ANY SUCH LITIGATION.
 - c. where Work is Delivered outside of Canada and the USA, the Contract shall be governed by the laws of England and Wales, and the courts of England and Wales shall have exclusive jurisdiction to settle disputes.

The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

15. Severability: If any term or provision of this Contract is held by a court or agency of competent jurisdiction to be inconsistent with or contrary with any applicable law, rule, or regulation, such term or provision shall be deemed to be modified to the extent required to comply with such applicable, law rule or regulation, and shall not affect the validity and applicability of the remainder of the Contract.