



## TERMS AND CONDITIONS OF SALE

### 1. Definitions.

(a) “**Buyer**” means the individual or entity identified on Buyer’s purchase order, or, if different, on Seller’s quotation, order acknowledgement or confirmation.

(b) “**Seller**” means the entity identified on Seller’s quotation, order acknowledgement or confirmation.

(c) “**Product**” means (i) any product designed or manufactured by or on behalf of Seller, or (ii) any third-party manufacturer’s product offered for sale by Seller.

2. **Terms; Seller’s Acceptance.** Unless Seller expressly agrees in writing, these Terms and Conditions will govern all purchase orders and quotations. Seller specifically rejects, and Buyer disclaims, all pre-printed provisions in Buyer’s purchase order and any other Buyer forms or documents, including any terms and conditions on Buyer’s internet site. Seller’s failure to object to any term or condition in any communication from Buyer will not be construed as agreement to such term or condition, nor will it be deemed a waiver of these Terms and Conditions. Seller reserves the right, in its sole discretion, not to accept any purchase order, including any purchase order issued in connection with a quotation provided by Seller. In the event the Buyer and Seller have executed a definitive contract relating to the Products purchased (a “Definitive Contract”), then the terms and conditions set forth in such contract shall supersede any conflicting terms and conditions set forth herein for as long as such contract is in effect and not terminated or expired.

3. **Entire Agreement; Amendments.** These Terms and Conditions, and Seller’s quotation or order acknowledgement or confirmation, (a) constitute the entire agreement of the parties covering the Products provided by Seller to Buyer, and (b) supersede all other written or oral agreements between the parties, except in the event of a Definitive Contract executed by the parties. Seller and Buyer may modify these Terms and Conditions, or the associated quotation or order acknowledgement or confirmation, only by an express written agreement signed by both parties.

4. **Commercial Contract.** The procurement rules and regulations of any local, state, federal or other government or governmental authority will not apply to any sales of Products by Seller to Buyer.

5. **Quotations and Prices.** Except as otherwise specifically provided in Seller’s quotation or order acknowledgement or confirmation, the prices of Products will be Seller’s published list prices in effect at the time of Seller’s quotation or Seller’s acknowledgement or confirmation of Buyer’s purchase order and are not subject to trade or other discounts. Seller may correct errors or omissions in published or quoted prices or change its published list prices at any time without notice. Unless stated otherwise in Seller’s quotation or order acknowledgement or confirmation, prices do not include any costs related to insurance, special packaging or insulation, source inspection, testing or similar charges, or related to service calls or service work performed by Seller, all of which must be paid by Buyer.

6. **Taxes.** Prices do not include occupation, sales, use, privilege, excise or similar taxes, duties, tariffs or assessments, and Buyer will pay any such amounts arising from the sale of the Products. In lieu of payment, Buyer may, prior to delivery of the Products, provide Seller with a tax exemption certificate acceptable to the appropriate taxing authority.

7. **Terms of Payment.** Unless Seller’s Customer Financial Services department otherwise agrees in writing, Buyer must make advance payment for Products in cash or by posting a letter of credit for Seller’s benefit. All payments shall be in U.S. Dollars unless otherwise agreed to by Seller. Buyer will pay interest on any past due invoices at a rate of 1.5% per month on the unpaid balance, or, if lower, the maximum rate permitted under applicable law. Buyer will pay all costs, including reasonable attorneys’ fees, court costs and collection agency fees that Seller incurs in the enforcement of this agreement against Buyer. Seller may, in its sole discretion, withhold shipment of orders if Buyer’s account is in arrears or if the financial condition of Buyer at any time becomes unsatisfactory to Seller. Buyer acknowledges that Seller retains a security interest in all Products, and all proceeds and products thereof, until Buyer renders payment in full, and Buyer hereby authorizes Seller to file any documents necessary to perfect Seller’s security interest.

8. **Shipping.** Seller will pack, package and crate Products in accordance with its standard commercial practices. Seller may make partial shipments and submit invoices for such partial shipments in accordance with the payment terms set forth in Section 7 above. Seller may ship overages or underages of weight, length, size and/or quantity in accordance with Seller’s standard practices.

9. **Title; Risk of Loss.** Title to the Products (but excluding any software included in or with the Products) and the risk of loss or damage to the Products will pass to Buyer when delivery of the Products is made in accordance with Section 10.

10. **Delivery.** Unless stated otherwise in Seller’s quotation or order acknowledgement or confirmation, all Products will be delivered FCA Seller’s facility (Incoterms 2010). Seller does not and will not guarantee any shipping or delivery date, and no person is authorized to commit to a delivery date except in a writing signed by an authorized officer of Seller. Seller may estimate shipping or delivery dates to the best of Seller’s knowledge based on information provided by Buyer and conditions existing at the time of the estimate. Seller will make commercially reasonable efforts to ship the Products by the estimated shipping date, but will not be liable for any damages, loss or expense (direct, incidental, indirect, economic, consequential or otherwise) arising from a delay in shipment.

11. **Force Majeure.** Seller will not be liable for any delay caused by any act of God, fire, flood, explosion, war, terrorism, insurrection, riot, embargo, action, statute, ordinance, regulation or order of any government or government agency, shortage of labor, material, fuel, supplies or transportation, strike or other labor dispute or any other cause, contingency, occurrence or circumstance of any nature beyond Seller’s control. If there is such a delay, Seller will have a reasonable extension of time in which to complete performance. If, as a result of such event, Seller’s performance is delayed, the prices applicable to the Products shall be subject to appropriate adjustment by Seller. If Seller is partially excused from performance either by any of the conditions listed above or by the provisions of any applicable laws or regulations, Seller will not be required to make any allocation of production, shipments or deliveries, notwithstanding any applicable laws or regulations that may provide otherwise.

12. **Acceptance of Products.** The Products provided by Seller are deemed accepted by Buyer upon delivery.

13. **Delivery Delays.** If Buyer delays delivery of completed Products, Buyer shall reimburse Seller for any and all costs of storage incurred by Seller after the date that Seller is prepared to deliver the Products. Seller may also invoice Buyer for the completed Products, and Buyer must pay for the Products in accordance with the terms of the original sale.

14. **Warranties.** Seller warrants the Products to Buyer in accordance with the terms, conditions and limitations of Seller’s Limited Warranty for such Products as in effect as of the date of shipment. Unless otherwise provided to Buyer in writing, Seller’s Limited Warranty for the Products is located on Seller’s website at [vextratech.com](http://vextratech.com) and is incorporated by reference into these Terms and Conditions. Nothing in these Terms and Conditions or in Seller’s Limited Warranty shall be construed to provide Buyer with a warranty for any system implementation using the Products. Warranties for system implementations or projects will be available only on terms set forth in a mutually agreed statement of work. Otherwise, all system projects, implementations and designs are the sole responsibility of Buyer.

15. **Patent Indemnity.** Seller will indemnify, defend and hold Buyer harmless from any liability arising out of any third-party claim that Products manufactured by Seller and sold to Buyer infringe any U.S. patent, including any damages awarded against Buyer in a final, non-appealable judgment of a court of competent jurisdiction. As a condition to Seller’s obligation to indemnify Buyer, Buyer must (i) notify Seller in writing within 10 days after Buyer knows a claim has been asserted against Buyer, (ii) grant to Seller complete control over the defense of the claim and (iii) provide to Seller all available documents and information regarding the claim. If the court finds that the Products are infringing, or if Seller believes that such a determination is possible, Seller may, in its sole discretion and at its expense, (w) replace the Products with non-infringing products, (x) procure on Buyer’s behalf a license for the continued use of the Products, (y) modify the Products to the extent necessary to cure any problems of infringement or (z) refund the purchase price paid for the Products that are claimed to be infringing, less a reasonable amount for depreciation, in which event Buyer will promptly discontinue using such Products. If infringement is alleged prior to completion of delivery of a Product, Seller may decline to make further shipments without being in breach of this agreement. Seller’s obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Seller thereafter gives Buyer express written consent for such continuing alleged infringement. Seller will have no liability under this Section 15, and Buyer will indemnify Seller for any resulting liability, (A) if the Buyer is in breach of any term herein, or (B) to the extent that any claim arises from or is caused by designs or specifications provided by Buyer, any modifications to any Product made by anyone other than Seller, the combination of any Product with any hardware, software or other components not provided by Seller or the use of any Product for purposes not contemplated by the parties at the time of sale. The rights set forth in this Section 15 are Buyer’s exclusive rights with respect to any claim of patent infringement and, except as set forth in this Section 15, the Products are sold subject to any third-party claims of infringement.

16. **Property Furnished by Buyer.** If Buyer furnishes any components, tools, dies, jigs or other property, equipment, material, or facilities to Seller in



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connection with the performance of this agreement, Buyer shall bear all risk of loss or damage with respect to such property, equipment, material, or facilities and shall indemnify and hold Seller harmless from and against all loss, cost, expense or liability arising in connection with its use of any such property, equipment, material, or facilities. Seller shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Seller's use of property, equipment, material, or facilities furnished by Buyer.

17. **Limitations on Liability. THE WARRANTIES IN SECTION 14 ARE EXCLUSIVE AND ARE MADE ONLY TO BUYER. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS AND EXCLUDES ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION OR WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OR PERFORMANCE. No person is authorized to give any additional warranties on Seller's behalf or to assume for Seller any other liability, except in a writing signed by an authorized officer of Seller. SELLER'S TOTAL LIABILITY FOR ANY CLAIM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCTS WILL BE LIMITED TO PROVEN DIRECT DAMAGES, NOT TO EXCEED THE PURCHASE PRICE OF SUCH PRODUCTS. IN NO EVENT (INCLUDING UNDER SECTION 15) WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY CLAIM FOR LOSS OF ACTUAL OR ANTICIPATED REVENUES OR PROFITS. The limitations on liability in these Terms and Conditions will apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, and whether damages were foreseeable. The limitations of liability in this Section 17 will survive failure of any exclusive remedies provided in these Terms and Conditions or in Seller's Limited Warranty.**

18. **Remedies for Events of Default.** If Buyer (i) fails to pay any amount due within 30 days of the due date, (ii) files a petition in bankruptcy or seeks relief under any bankruptcy, reorganization, insolvency, dissolution, liquidation or similar law of any jurisdiction, or (iii) becomes unable to pay or suspends payment of its debts as they become due, or if a court issues an order appointing a receiver, custodian or administrator over all or part of Buyer's assets, Seller may terminate any outstanding purchase order. In addition, without waiving any other available remedies, Seller may: (w) declare immediately due and payable all sums due and to become due under any outstanding purchase order; (x) stop manufacture of any Products for Buyer; (y) stop all shipments in progress and future shipments; and (z) repossess any Products in which Seller has a security or ownership interest

19. **Waiver of Subrogation.** Each party waives (for itself and its insurance carrier) all its rights of subrogation against the other party and the other party's employees, agents, suppliers and subcontractors to recover damages and losses to the extent such damages or losses are covered by insurance; provided that this provision will have no effect to the extent that it invalidates or otherwise limits the insurance coverage of a party.

20. **Specifications.** Seller may change its Product specifications and manufacturing practices at any time without notice to Buyer; provided that such changes do not materially impair the performance of the Products. Seller will exclusively own all materials and information provided by Seller to Buyer, including, without limitation, specifications, drawings, engineering data and technical designs.

21. **All Sales Final.** Unless otherwise expressly agreed in writing by Seller, all sales are final. No returns will be accepted by Seller without a written authorization to return materials signed by Seller.

22. **Changes; Cancellation.** Buyer may cancel a purchase order only with Seller's express written consent. If Seller determines that a change order is required, Seller may request that Buyer provide a revised purchase order. Any other change order must be in writing and signed by duly authorized representatives of Seller and Buyer. Change orders will specify any resulting adjustments in delivery schedule or price.

23. **No License.** Neither these Terms and Conditions nor the purchase of any Products hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Seller, except the right to use such goods for the purposes for which they are sold. Buyer does not acquire any right, title or interest in any tooling, set-up, fitting-up, drawings, design information, or invention or other intellectual property resulting therefrom, which remain the sole property of Seller.

24. **Compliance with Laws.** Buyer will comply with U.S. export control

laws and will comply with all other applicable laws affecting the purchase and use of the Products, including, without limitation, any applicable export laws. Buyer will maintain all required licenses, permits and registrations with governmental authorities and agencies, commercial registries, chambers of commerce or other offices. Buyer will not export or re-export the Products to any country in violation of U.S. export control laws or any other applicable export control laws. Buyer shall neither directly nor indirectly pay or offer, promise, give, or authorize to pay money or anything of value to any employee or official of a government or instrumentality or department thereof, to any political party or candidate for political office, to any employees or officials of public international organizations, or to any other person with the knowledge or belief that such money or item of value will be passed on to one of the above to influence any act or decision by such person or by any governmental body for the purpose of obtaining, retaining, or directing business or to otherwise obtain an improper advantage. To the extent Buyer provides personally identifiable information to Seller, Buyer represents and warrants that it has taken all steps legally required under applicable data protection, privacy or related laws, including but not limited to providing notice and/or obtaining individual consent, where legally required, in order to disclose, transfer or otherwise provide such personally identifiable information to Seller. On request, Buyer will furnish to Seller a certificate of compliance regarding the foregoing undertakings.

25. **Confidential Information.** Buyer will not disclose any confidential or proprietary information of Seller, including, without limitation, any information regarding pricing of the Products or the other terms and conditions of sale of the Products to Buyer, nor shall Buyer use any such confidential or proprietary information other than in the course of performing its obligations hereunder. Seller retains ownership of all of its confidential and proprietary information and all documentation containing such information. Upon request of Seller, Buyer shall immediately return any such confidential or proprietary information provided, including all copies made by Buyer. In addition, Buyer will not use any of Seller's trademarks, service marks or trade names without the express written consent of Seller.

26. **No Partnership or Joint Venture.** The parties agree that nothing in these Terms and Conditions will create any agency, employment, partnership, joint venture or fiduciary relationship between Buyer and Seller.

27. **Assignment.** These Terms and Conditions are binding upon, and inure to the benefit of Buyer, Seller and their permitted successors and assigns. Buyer may not assign all or any portion of its rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of Seller. Any attempted assignment without such consent shall be void. Seller may assign, delegate, novate or subcontract any of its rights or obligations, in whole or in part, without Buyer's consent.

28. **Waiver.** Seller's waiver of any breach of any provision contained in these Terms and Conditions will not waive any other breach by Buyer. Seller's delay or failure to enforce its rights under these Terms and Conditions shall not be deemed a waiver of such rights.

29. **Governing Law.** This agreement will be governed by the internal laws of the State of North Carolina, including the Uniform Commercial Code as adopted in the State of North Carolina, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply. All shipping and delivery terms specified herein will have the definitions set forth in the Incoterms 2010 published by the International Chamber of Commerce.

30. **Venue; Limitation of Actions – US Buyers. WHERE BUYER HAS ITS PLACE OF BUSINESS OR IS INCORPORATED IN THE UNITED STATES, BUYER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE COURT LOCATED WITHIN CATAWBA COUNTY, NORTH CAROLINA OR ANY FEDERAL COURT LOCATED IN THE WESTERN DISTRICT OF NORTH CAROLINA AND CONSENTS THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER. NOTHING IN THIS AGREEMENT AFFECTS THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING ANY ACTION OR PROCEEDING AGAINST BUYER IN THE COURTS OF ANY OTHER JURISDICTION THAT HAS JURISDICTION OVER BUYER. TO THE EXTENT PERMITTED BY LAW, BUYER WAIVES TRIAL BY JURY AND WAIVES ANY OBJECTION THAT IT MAY HAVE BASED ON LACK OF JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.**



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31. **Arbitration; Non-US Buyers.** WHERE BUYER DOES NOT HAVE ITS PLACE OF BUSINESS IN THE UNITED STATES AND IS NOT INCORPORATED IN THE UNITED STATES, THE PARTIES AGREE THAT ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT BETWEEN THE PARTIES, OR THE BREACH, TERMINATION, OR VALIDITY THEREOF, SHALL BE DETERMINED BY ARBITRATION ADMINISTERED BY THE INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION IN ACCORDANCE WITH ITS INTERNATIONAL ARBITRATION RULES. THE PLACE OF ARBITRATION SHALL BE NEW YORK AND THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH. IN THE EVENT THAT IT IS NECESSARY TO SEEK TO RECOGNIZE AND/OR ENFORCE THE ARBITRATION AWARD, THE PARTIES HEREBY CONSENT THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION OR ORDER ACKNOWLEDGMENT. NOTHING IN THIS AGREEMENT

AFFECTS THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. NOTHING IN THESE TERMS & CONDITIONS WILL PREVENT EITHER PARTY FROM RESORTING TO JUDICIAL PROCEEDINGS FOR THE LIMITED PURPOSE OF SEEKING INJUNCTIVE OR OTHER INTERIM RELIEF. IN SUCH EVENT, THE PARTIES HEREBY CONSENT THAT ALL SERVICE OF PROCESS BE MADE BY REGISTERED OR CERTIFIED MAIL DIRECTED TO IT AT ITS ADDRESS SET FORTH ON THE PURCHASE ORDER, QUOTATION OR ORDER ACKNOWLEDGMENT. NOTHING IN THIS AGREEMENT AFFECTS THE RIGHT OF SELLER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.