

XiTRON Technologies, Inc. U.S.

Terms and Conditions of Sale for Persons or Entities Purchasing to Resell

Test and Measurement Products

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT APPLY TO YOU.

These terms and conditions ("Agreement") apply to your purchase and resale of test and measurement equipment, accessories, and related products and/or services and support manufactured and sold in the United States ("Products") by XiTRON Technologies, Inc. entity named on the invoice ("XiTRON") or other documents provided to you by XiTRON. By placing purchase orders and/or accepting delivery of the Products you agree to be bound by and accept the terms and conditions of this Agreement. These terms and conditions are subject to change at any time at XiTRON's sole discretion without prior written notice. If you do not wish to be bound by this Agreement, you must promptly notify XiTRON. Products must remain in the packing material and boxes in which they were shipped and XiTRON notified immediately to arrange a Product return. **YOU WILL BE RESPONSIBLE FOR SHIPPING & HANDLING CHARGES FOR THIS RETURN. ADDITIONAL RETURN OR RESTOCKING FEES MAY APPLY. THIS AGREEMENT SHALL APPLY UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT WITH XiTRON OR OTHER XiTRON TERMS AND CONDITIONS APPLY.**

- 1. Other Documents.** This Agreement may NOT be altered, supplemented or amended by the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by both you and XiTRON Technologies, Inc.. If you do not receive an invoice or acknowledgement in the mail or with your Product, information about your purchase may be obtained at <http://www.xitrontech.com> or by contacting your sales representative.
- 2. Reselling.** Reselling to third-parties is hereby forbidden without expressed written approval, unless the buyer is an Authorized XiTRON Technologies Manufacturer's Representative, Distributor or Value-Added Reseller. This Agreement is not exclusive. XiTRON may market Products to any third party directly or indirectly without any obligation or liability to you. If you are an Authorized Manufacturers Representative, Distributor, Value-Added Reseller or have been authorized to resell XiTRON Technologies products, accessories or services, this Agreement does not guarantee that you will make any sales of the Products. XiTRON reserves the right to restrict or prohibit your participation in certain promotions, add, modify, or discontinue pricing, Products and/or parts. XiTRON may require you to meet additional obligations not outlined herein, which will be disclosed to you prior to your purchase of Products. You will provide XiTRON such information and reports as may reasonably be requested by XiTRON.
- 3. Trademarks; Copyrights.** Unless you are an expressly Authorized Manufacturers Representative, Distributor, Value-Added Reseller or Agent, you may not use the "XiTRON" name and XiTRON's product-family name, unless given permission in writing by a XiTRON Technologies, Inc. executive. Failure to change or correct, at your own expense, any material or activity that XiTRON decides is inaccurate, objectionable or misleading or a misuse of XiTRON's name, trademarks, service marks, or XiTRON's logos or copyrighted works, is punishable within the courts of California. You may not use the XiTRON name and XiTRON's product names for any other purpose. You will clearly and prominently identify yourself in all offers and advertising, marketing and promotional materials relating to this Agreement.
- 4. Quotes; Orders; Payment Terms; Interest.** Payment terms are within XiTRON's sole discretion, and are set at "30 days after receipt of product. You agree not to violate the terms of any offer or concession made available by XiTRON. XiTRON may invoice and/or ship parts of an order separately. XiTRON reserves the right to cancel an order or transaction, in whole or in part. If you breach the provisions of this Agreement or the terms of any offer, XiTRON may charge or re-debit your account or credit card the full list price for your purchase (in lieu of a discounted or special price included in the offer). You agree to pay interest on all past-due sums at the highest rate allowed by law. You hereby grant XiTRON, and XiTRON hereby retains, a purchase money security interest and lien on any and all of your rights, title and interest in Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late charges and costs of collection. You consent to XiTRON's use of this Agreement, as well as Product invoices, as financing statements for protecting this security interest and appoint XiTRON as your agent for service of process. Unless you and XiTRON have agreed to a different discount, XiTRON's standard pricing policy for XiTRON-branded systems, which include both hardware and

services in one discounted price, allocates the discount off list price applicable to the service portion of the system to be equal to the overall calculated percentage discount off list price on the entire system.

5. **Shipping Charges; Taxes.** Shipping dates provided by XiTRON are estimates only. Shipping and handling are additional and will be shown on the invoice(s) or other documentation. Resolution of loss or damage that occurs during shipping by a carrier selected by XiTRON is XiTRON's responsibility. Resolution of loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Unless you provide XiTRON with a valid and correct tax exemption certificate applicable to the Product ship-to location at the time of purchase, you will be responsible for sales and all other taxes associated with the order, however designated, except for XiTRON's franchise taxes and taxes on XiTRON's net income.
6. **Title; Risk of Loss; Insurance.** Title to products passes from XiTRON to you on shipment from XiTRON's facility or third party manufacturers facility. Title to software will remain with the applicable licensor(s). You will maintain comprehensive general liability, including products liability, insurance in an amount appropriate for your business, but in no event less than \$1,000,000.00 (US) with an insurance company having a Best rating of A. Upon XiTRON's request, you will provide to XiTRON a certificate of such insurance (including any new or amended certificates of insurance) and/or name XiTRON as an additional insured.
7. **Warranties.** XITRON MAKES NO EXPRESS WARRANTIES EXCEPT THOSE STATED IN THIS SECTION AND IN XITRON'S APPLICABLE LIMITED WARRANTY STATEMENT IN EFFECT ON THE DATE OF THE INVOICE, PACKING SLIP OR ACKNOWLEDGEMENT FOUND AT <http://www.xitrontech.com> OR THE DOCUMENTATION PROVIDED WITH THE PRODUCT(S). XITRON DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES BY XITRON FOR NON-XITRON BRANDED PRODUCTS, SERVICE OR SOFTWARE PRODUCTS. ALL SUCH PRODUCTS ARE PROVIDED BY XITRON "AS IS". NO REVISION IN LIMITED WARRANTIES WILL AFFECT PRODUCTS ALREADY ORDERED BY YOU.
8. **Additional Remedies & Responsibilities.** XITRON RESERVES THE RIGHT TO DISCONTINUE OR OTHERWISE VOID ANY WARRANTY, SERVICE OR TECHNICAL SUPPORT IT OFFERS IN WHOLE OR IN PART IF YOU BREACH ANY OF YOUR OBLIGATIONS UNDER THIS AGREEMENT OR IF YOU FAIL TO PAY AMOUNTS DUE FOR PRODUCTS YOU PURCHASE FROM XITRON. YOU SHALL BE SOLELY RESPONSIBLE FOR ALL REPRESENTATIONS OR OMISSIONS YOU MAKE TO YOUR CUSTOMERS INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR OMISSION YOU MAKE ABOUT PRODUCT WARRANTIES, FEATURES, PERFORMANCE, SUPPORT AND SERVICE. YOU WILL INFORM YOUR CUSTOMERS OF XITRON'S RIGHTS AND YOUR OBLIGATIONS UNDER THIS AGREEMENT.
9. **Software.** All software is provided subject to the license agreement that is provided with the Product. You agree that you and your customers will be bound by such license agreement.
10. **Custom Modifications.** The performance of all custom modifications are tested at 25°C (±3°) unless otherwise noted. Performance specifications meet customer requirements under typical operating conditions. Custom modifications may affect standard performance or ratings. Contact XiTRON for additional information.
11. **No Returns.** XiTRON's return policies, including but not limited to XiTRON's "Return Policies," do not apply to your purchase of Product or, if applicable, to your customers.
12. **Products.** XiTRON's policy is one of on-going Product update and revision. XiTRON may revise and discontinue Products at any time without notice to you. XiTRON will ship Products that have the functionality and performance of the Products ordered, but changes between what is shipped and what is described in a specification sheet or catalog are possible. The parts and assemblies used in building Products and spare parts are selected from new, equivalent-to-new or reconditioned parts and assemblies.
13. **Limitation of Liability.** XITRON DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, LOST PROFITS, LOSS OF BUSINESS, YOUR BREACH OF THIS AGREEMENT OR THE PROVISION OF SERVICES AND SUPPORT. XITRON WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ON OUR WEB SITE TO THE CONTRARY, XITRON IS NOT

RESPONSIBLE FOR INFORMATION YOU PROVIDE TO US UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT OTHERWISE. YOU AGREE THAT FOR ANY LIABILITY ARISING FROM OR RELATED TO THE PURCHASE OF ANY PRODUCTS, XiTRON IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT INVOICED BY XiTRON FOR THE RESPECTIVE PRODUCTS. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

14. **Service and Support.** Service offerings may vary from product to product. If you purchase optional services and support, XiTRON or a third party service provider will provide the optional service and support to you or your customer, in accordance with the terms and conditions in effect at the time of your purchase located at <http://www.xitrontech.com> or as may be mailed to you. XiTRON may, at its discretion, revise its general and optional service and support programs and the terms and conditions that govern them without prior notice to you or your customer. **XiTRON HAS NO OBLIGATION TO PROVIDE WARRANTY OR SUPPORT SERVICES TO YOU UNTIL XiTRON HAS RECEIVED FULL PAYMENT FOR THE PRODUCT THAT YOU PURCHASE.** To transfer service, contact XiTRON's customer service or go to <http://www.xitrontech.com>.
15. **YOUR INDEMNITY TO XiTRON.** To the fullest extent permitted by law, you will indemnify, defend and hold XiTRON, including XiTRON's partners, officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, debt or liability (including reasonable attorneys fees, expenses and court costs) arising from: (a) your modification(s) of and/or addition(s) to Product(s); (b) your breach of this Agreement, (c) your omissions, misrepresentations, or negligence, and (d) the Products sold by you damage a third party to the extent such claim is based on (i) your modification of and/or addition to the Products, misuse or abuse of the Products, negligence or breach of any provision in this Agreement; (ii) your failure to abide by all applicable laws, rules, regulations and orders that affect the Products; (iii) your omission, misrepresentation, or negligence, or (iv) you or your end-users cause intentional harm to any person or property. Indemnified claims, debts and liabilities include the amount of any discount in price or concession that is made available by XiTRON to you.
16. **Dispute Resolution.** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against XiTRON, its agents, distributors, employees, representatives, successors, assigns or affiliates (collectively for purposes of this paragraph, "XiTRON") arising out of or relating to this Agreement, XiTRON's advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration. The Arbitration will be conducted before three (3) independent and impartial arbitrators. XiTRON will appoint one (1) arbitrator and the other party or parties will appoint one (1) arbitrator. The two (2) appointed arbitrators will then select a third arbitrator, who shall be the presiding arbitrator. The arbitration hearing shall take place in San Diego, California and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrators shall base their award on the terms of this Agreement, and will follow the law and judicial precedents that a United States District Judge sitting in the Southern District of California would apply to the Dispute. The arbitrators shall render their award in writing and will include the findings of fact and conclusion of law upon which their award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The existence or results of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.
17. **Independent Contractors.** No provision of this Agreement will or shall be deemed to create a partnership, joint venture or other combination between XiTRON and you. You and XiTRON are independent contractors. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other party. Each party is responsible for the amounts it incurs arising from this Agreement and for the direction and compensation, and is liable for the actions of, its employees and subcontractors.
18. **Governing Law. THE LAWS OF THE STATE OF CALIFORNIA, USA GOVERN THIS AGREEMENT, EXCLUDING ITS CONFLICTS OF LAWS RULES AND EXCLUDING THE UNITED NATIONS CONVENTION ON THE INTERNATIONAL SALE OF GOODS.**

19. **Export.** You acknowledge that the purchased goods licensed or sold under this Agreement, and the transaction contemplated by this Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured and/or received. You acknowledge that it is your sole responsibility to comply with and abide by those laws and regulations. Further, under U.S. law, the goods shipped pursuant to this Agreement may not be sold, leased or otherwise transferred to restricted countries or utilized by restricted end-users or an end-user engaged in activities related to weapons of mass destruction, including without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, and chemical or biological weapons. You agree not to provide any written regulatory certifications or notifications on behalf of XiTRON. XiTRON has not tested Products for use in high-risk activities including but not limited to any life sustaining, chemical, or mission critical use. **XITRON WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT, OR WEAPONS SYSTEMS.**
20. **Headings.** The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived there from. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated. Neither party will be liable for any delays resulting from circumstances or causes beyond the party's reasonable control.

(REV 01/23/06)