



TERMS AND CONDITIONS OF PURCHASE

Vendor supplies the Company parts and products (the “Products”) for incorporation by XMA Corporation (the “Company”) into its own products for sale and distribution to customers. Products are purchased by the Company pursuant to purchase orders issued by the Company. This Agreement contains the terms and conditions of the purchase of Products by the Company from the Vendor and the terms are incorporated by reference into all purchase orders between the Company and Vendor.

1.0 Price and Delivery Terms. The prices for the Products shall be established under the purchase orders issued from the Company to the Vendor. Vendor shall deliver all Products F.O.B. Destination 150 Dow Street, Manchester, New Hampshire 03101 or such other destination point the Company may specify to Vendor in any purchase order or other written communication. Full payment shall be due within thirty (30) days from shipment. The payment due dates shall be adjusted for Products that the Company rejects as defective or as being in incorrect quantities.

2.0 Quality Management System. The XMA Quality Management System is AS9100C registered. For all parts and products specified on this Purchase Order, the Company reserves the right to inspect/verify all products or services upon receipt to the revision identified on the Purchase Order. The Company, our customer(s), and authorities reserve the right to access all the sites as well as all the applicable records utilized to satisfy this Purchase Order. The Company requires products or services to be manufactured/supplied per the requirements of your registered/accredited quality management system, as applicable (ex. ISO 9001, AS9100, ISO 17025). The Company requires 100% on-time delivery of products and services from all suppliers, per the requirements of our AS9100C quality management system. The Company encourages you to monitor the quality performance of your manufacturing processes, as applicable. Any non-conforming product or changes in product or process must be approved by the Company before shipping.

3.0 Representation and Warranties. Vendor expressly warrants that all Products shall be of merchantable quality, free from defects in materials and workmanship, and fit for its intended use for the Company’s products. If applicable (per flow down on the Company purchase order), vendor further represents and warrants that all Products and shipments of Products: (a) Shall be accompanied by a Certificate of Compliance stating that: “All ‘Specialty Metals’ used in items supplied against this order must comply with the requirements of DFARS 252.255-7014, Alt. 1 ‘Preference of Specialty Metals.’ This requirement shall flow down to all subcontractors and purchase orders at each tier of supplier.”; (b) Shall comply with all United States export control laws, rules, and regulations applicable to the manufacture, sale, distribution, and re-export of the Products including, without limitation, to the extent applicable, the International Traffic in Arms Regulations (ITAR); (c) Shall not use or incorporate any Substance of Any High Concern (SHVC’s) in its manufacturing processes under the Regulation (EC) NO.1907/2006 of the European Parliament and of the Council as identified in the June 2011 update; and (d) Shall disclose the use of certain conflict metals originating from the Democratic Republic of the Congo and any adjoining country to be in compliance with the US Financial Reform Law of 2010.

4.0 Indemnification; Warranty Disclaimer. Vendor shall defend, indemnify and hold the Company harmless from and against any and all claims howsoever arising, whether sounding in tort (including personal injury or any property damage), contract, warranty, or otherwise, and all reasonable expenses, including without limitation attorney's fees and court costs, arising from or related to (i) any breach or failure of the covenants, warranties, representations, and commitments of Vendor contained herein; (ii) the manufacture, delivery, and sale of the Products; (iii) the costs and expenses incurred by the Company due to defects in Vendor’s manufacture of the Products; and/or (iv) any and all liability, loss or damage, cost or expense (including court costs and reasonable attorneys' fees) arising out of or resulting from use of any Products. The Company shall give Vendor written notice of any breach of warranty promptly after the Company’s discovery thereof and shall, within a reasonable time period of receiving notice of any indemnified claim (but not to exceed the greater of 30 days from notice), notify Vendor of any such indemnified claim. VENDOR MAKES NO INDEMNITY, REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, EXCEPT FOR THE WARRANTIES AND INDEMNITIES EXPRESSLY SET FORTH IN THIS AGREEMENT.



5.0 Term and termination; Delivery and Remedies. This Agreement shall be effective from the date hereof and shall remain valid for any purchase order issued from the Company to the Vendor. This Agreement may be terminated by either party in writing at any time, provided however, that this Agreement shall remain valid and enforceable for any purchase orders issued prior to the date that a notice of termination is delivered. Vendor agrees that timely delivery of the Products at the times specified herein, in purchase orders issued by the Company, or in other written instructions from Company to the Vendor is critical the Company's ability to service its customers and retain its position in the Company's. Without limiting the Company's rights or remedies at law or in equity for breach by Vendor of any provisions of this Agreement, in the event of any late delivery of the Products, or other breach of this Agreement, the Company may take any or all of the following actions: (a) Terminate or partially terminate this Agreement; (b) Reject or partially reject any delivery; and/or (c) Vary delivery terms hereunder. Vendor hereby agrees and acknowledges that any breach of the covenant set forth in Section 4.0 could cause substantial and irreparable harm to the Company's business which may not adequately be compensated by money damages alone. In addition to and without limitation of any other remedy that may be available to the Company for breach of such covenant, the Company may seek injunctive or other equitable relief available to the Company.

6.0 Force Majeure/ Notice of Labor or Raw Materials Shortage. A party shall not be deemed to have defaulted or failed to perform hereunder if that party's inability to perform or default shall have been caused by an event or events beyond the control and without the fault of that party, including (without limitation) acts of Government, embargoes, fire, flood, explosions, acts of God or a public enemy, strikes, labor disputes, vandalism, civil riots or commotions, or the inability to procure necessary raw materials, supplies or equipment.

7.0 Confidentiality. Any technology or processes, including without limitation technical, financial, sales or marketing information (the "Protected Data"), which is not generally known and which one party (the "Providing Party") provides to the other (the "Non-providing Party") in connection with this Agreement, shall be deemed confidential and proprietary to the Providing Party, and will be held in confidence by the Non-providing Party, and will not be utilized for the latter's benefit or disclosed by the latter to others, except if such information (a) was generally known to the public other than by reason of disclosure by the Non-Providing Party in violation of this Agreement; (b) was independently known to the Non-Providing Party prior to disclosure by the Providing Party, as demonstrated by clear and convincing documentation in the Non-Providing Party's files; or (c) was independently developed by a third person, who disclosed it to the Non-Providing Party as demonstrated by clear and convincing documentation in the Non-Providing Party's files. In the event of any dispute arising from or relating to Protected Data, the burden of proof in establishing any of the foregoing shall be on the Non-Providing Party.

8.0 Contractual Relationship. It is understood and agreed that Vendor and the Company are, and at all times during the term of this Agreement shall remain, independent contractors and no partnership or joint venture is intended or implied by the undertakings set forth in this Agreement. At no time shall either party represent to any third party that it is the agent of the other. In no event shall either party at any time have authority to make any contracts, commitments or undertake any obligations on behalf of the other. Without limiting the foregoing, the Company and Vendor each agree that they will not, during or after the term of this Agreement, represent to any person that it acts for or on behalf of the other or make use of the other's name, or advertise its relationship with the other, without express written consent in each instance.

9.0 Confidentiality of Agreement. Neither party may disclose the terms of this Agreement to any other party (other than the Company's and Vendor's respective legal and other advisors involved in negotiating this Agreement) without the other parties' prior written consent.

10.0 Binding on Successors. This Agreement shall be binding upon the parties hereto, their successors in interest and assigns.

11.0 Entire Agreement; Amendment. This Agreement and the purchase orders issued by the Vendor shall comprise all of the agreements of the parties in the respect to the subject matter hereof. All prior promises, representations, discussions, negotiations, communications or understandings concerning the same shall be of no further force and effect. No modification, amendment, extension, renewal, rescission, termination or waiver of any of the provisions contained herein, or any future representation, promise or condition in connection with the subject matter hereof, shall be binding upon either party unless agreed to in writing and signed by an authorized officer on behalf of each party.



12.0 Choice of Law/Jurisdiction. This Agreement shall be governed by the laws of the state of New Hampshire, without reference to its conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction. The parties agree that any action hereon may be brought in a state or federal court of proper subject matter jurisdiction, located within New Hampshire, or in any court to which an appeal from a New Hampshire situated court can be taken. Each party irrevocably designates the Secretary of the State of New Hampshire as its agent for service of process in any action between the parties arising out of this Agreement. The parties hereby opt out of the Convention for the Sale of International Goods (CISG).

13.0 Captions and Headings. Captions and paragraph headings are for ease of reference only, and shall not be referred to in interpreting this Agreement.

14.0 Severability. In the event that one or more provisions of this Agreement shall for any reason be found to be void, invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall nonetheless remain in full force and effect, and shall be construed by the court (to the greatest extent possible) in such a way as to confer upon the parties the benefits and rights which they would have possessed under the Agreement as a whole, had the invalidated provisions) remained in effect.

15.0 No Waiver. The failure of either party to insist, in one or more instances, upon strict performance of this Agreement, or to exercise any right contained herein, shall not be constructed as a waiver or relinquishment of the right to insist on the strict performance of such obligations or any other occasion.

16.0 Notice. Except as other modes of notice are expressly permitted hereby, any notice required or permitted to be given by a party pursuant to this Agreement shall be deemed effective if given in writing, delivered by registered mail; verified courier delivery; or confirmed facsimile transmission to the parties at the addresses listed on the last purchase order issued by the Company, or to such other person and (or addresses) as either party may from time to time designate in writing. Notice shall be deemed effective (a) in the case of a mailed notice, on the 3rd day following mailing; and (b) in all other cases, upon actual receipt.