

TERMS AND CONDITIONS OF SALE

XYMOX TECHNOLOGIES, INC.

August 2011

1. Offer and Acceptance. This writing constitutes an offer or counter-offer by XYMOX Technologies, Inc. ("Xymox") to sell the products described herein in accordance with these terms and conditions, is not an acceptance of any offer made by the buyer to whom this offer is addressed (the "Buyer"), and is expressly conditioned upon assent to these terms and conditions. Buyer will be deemed to have assented to these terms and conditions when: (a) Buyer signs and delivers to Xymox an acknowledgment copy of any of Xymox's sales Quotation, order acknowledgment or invoice forms, (b) Buyer has accepted delivery of the whole or any part of the goods or services described herein, or (c) Buyer has otherwise assented to the terms and conditions hereof, whichever occurs first. No additional or different terms or conditions will be binding upon Xymox unless specifically agreed to in writing. These terms and conditions also apply to change orders, if any. Failure of Xymox to object to provisions contained in any purchase order or other communication from a Buyer shall not be construed as a waiver of these terms and conditions nor an acceptance of any of such provisions. This offer expires thirty (30) days from its date unless otherwise specified in writing, and may be revised or withdrawn by Xymox any time prior to acceptance.
2. Cancellation. No order may be canceled or altered by Buyer except upon terms and conditions acceptable to Xymox, as evidenced by Xymox's written consent. Buyer is required to receive and pay for all parts that have been run by Xymox. Charges for order cancellations will be negotiated on a case by case basis. In any event, Buyer must promptly reimburse Xymox for the cost of all special materials which have been purchased by Xymox for the canceled orders.
3. Prices and Payment. Prices quoted are based on the maximum quantities specified on the face of the Quotation Form. If quantities are reduced by Buyer for any reason, or if Buyer at any time requires delivery of a specific quantity which necessitates an increase in Xymox's cost of producing the products, Xymox reserves the right to adjust the price(s) accordingly. If the buyer changes the material or manufacturing requirements for any reason which necessitates an increase in Xymox's cost of producing parts, Xymox reserves the right to adjust the price(s) accordingly. Xymox reserves the right to adjust pricing for any federal, state, or local mandated costs that increases Xymox's cost of producing parts during the life of this agreement. Invoices are due and payable within thirty (30) days from date of invoice. Interest will be charged at the rate of 1-1/2 percent per month (18% per annum) (but not more than the highest rate permitted by applicable law) on all accounts not paid when due. Xymox reserves the right to change the payment terms provided herein when, in Xymox's opinion, the financial condition or previous payment record of Buyer so warrants.
4. Taxes and Other Charges. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Xymox and Buyer shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Xymox is required to pay any such tax, fee, interest or charge, Buyer shall reimburse Xymox therefor.
5. Credit. Fulfillment of orders by Xymox shall at all times be subject to the approval of Buyer's credit. Xymox, at its discretion, may at any time decline to make any shipment or perform any work except upon receipt of payment or security upon such terms and conditions as may be satisfactory to Xymox. In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency, against Buyer, or in the event of the appointment, with or without Buyer's consent, of a receiver or an assignee for the benefit of creditors, Xymox may elect to cancel any unfilled order.
6. Delivery, Claims and Force Majeure. Delivery of products to a carrier at Xymox's plant of manufacture shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss or damage in transit. Xymox reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries.
 - a. Deliveries of up to ten percent (10%) less than the quantity specified on the face of the Quotation or ten percent (10%) greater than the quantity shown on the face of the Quotation shall not be deemed a shortage or an overage. Claims for shortages, overages, or other errors in delivery must be made in writing to Xymox within ten (10) days after receipt of shipment. Claims for visible defects must be made within thirty (30) days after receipt of shipment. Failure to give any such notice shall constitute

unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss or damage to goods in transit should be made to the carrier and not to Xymox.

- b. All shipping dates are approximate. Xymox shall not be liable for any damage as a result of any delay or failure to ship due to any cause beyond Xymox's reasonable control, including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Xymox's inability to deliver for any reason shall be rescission of this agreement.
7. Storage. If the products are not shipped within 15 days after notification to Buyer that they are ready for shipping, for any reason beyond Xymox's reasonable control, including Buyer's failure to give shipping instructions, Xymox may store such products at Buyer's risk in a warehouse or upon Xymox's premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefor.
8. Changes. Xymox may at any time make such changes in design and construction of products as shall constitute an improvement in the judgment of Xymox. Xymox may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials.
9. Warranties. Xymox warrants to the Buyer that products manufactured by it and supplied hereunder shall be free from defects in materials and workmanship for a period of twelve (12) months from date of shipment. If within such period any such product shall be proved to Xymox's satisfaction to be defective, such product shall be repaired or replaced, or the purchase price of the product shall be refunded to Buyer, at Xymox's option. Such repair, replacement or refund shall be Xymox's sole obligation and Buyer's exclusive remedy hereunder and shall be conditioned upon Xymox's receiving written notice of any alleged defect within ten (10) days after its discovery and, at Xymox's option, return of such products to Xymox, F.O.B. its factory. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND XYMOX EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.**
 - a. Any description of the products, whether in writing or made orally by Xymox or Xymox's agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Xymox or Xymox's agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in writing by Xymox.
10. Returns. Products may be returned to Xymox only when Buyer obtains Xymox's advance written permission, evidenced by a Returned Goods Authorization ("RGA") number issued by Xymox. Returned products must be securely packaged to reach Xymox without damage; and any cost Xymox incurs to put products in marketable condition will be charged to Buyer. The RGA number must be referenced in Buyer's shipping documents.
11. Patents, Trademarks and Copyrights. Any products Xymox furnishes to Buyer manufactured in accordance with drawings, designs or specifications proposed or furnished by Buyer or any claim of contributory infringement resulting from the use or resale by Buyer of products sold hereunder, Xymox shall not be liable, and Buyer shall indemnify Xymox against any award made against Xymox for any and all patent, trademark or copyright infringements.
 - a. Xymox will, at its own expense, defend or settle any claim that may be instituted by anyone against Buyer alleging that the products manufactured by Xymox and sold to Buyer hereunder infringe any United States patent, trademark or copyright, if such alleged infringement consists of the use of such products, or parts thereof, in Buyer's business for any of the purposes for which the same were sold by Xymox, and provided Buyer shall have made all payments then due hereunder and shall give Xymox immediate notice in writing of any such claim and transmit to Xymox immediately upon receipt all processes and papers served upon Buyer and permit Xymox through its counsel, either in the name of Buyer or in the name of Xymox, to defend or settle the same and give all needed information, assistance and authority to enable Xymox to do so. If use of such products is held by final court decision from which no further appeal can be taken, to infringe any valid United States patent, trademark or copyright and their use is permanently enjoined or in the event of a settlement or compromise approved by Xymox

that shall preclude further use of such products by Buyer, then: (a) Xymox will pay any final and unappealable award of damages in such suit directly attributable to such infringement, and (b) Xymox shall, at its own expense and at its sole option, either (i) procure for Buyer the right to continue using the products to the extent contemplated herein, (ii) modify the products to render them noninfringing, (iii) replace the products with noninfringing goods, or (iv) refund the purchase price and the transportation costs Buyer paid for the products upon return (at Xymox's option) of the Products to Xymox.

- b. Notwithstanding the foregoing, Xymox shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the products in combination with other goods or materials not furnished by Xymox. The foregoing states the entire liability of Xymox for infringement, and in no event shall Xymox be liable for consequential damages attributable to an infringement.
12. Consequential Damages and Other Liability; Indemnity. Except as otherwise agreed in writing, Xymox's liability with respect to the products and/or services sold hereunder shall be limited to the warranty provided in section 9 hereof, and, with respect to other performance of this contract, shall be limited to the contract price. **XYMOX SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY XYMOX, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Xymox specifically disclaims any liability for property or personal injury damages, penalties, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, cost of substitute products, facilities or services, down-time, shut-down or slow-down costs, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages. **XYMOX SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER.**
- a. Buyer shall indemnify Xymox against any and all losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Xymox may incur as a result of any claim by Buyer or others arising out of or in connection with the products and/or services sold hereunder and based on product or service defects not proven to have been caused solely by Xymox's negligence.
13. Technical Information. Any sketches, models or samples submitted by Xymox shall remain the property of Xymox, and shall be treated as confidential information unless Xymox has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production techniques revealed thereby, shall be made without the express written consent of Xymox.
14. Buyer's Property. Any property of Buyer placed in Xymox's custody for performance of this contract is not covered by insurance, and no risk is assumed by Xymox in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of Xymox.
15. Tools. Any dies, jigs, tools, negatives or plates ("Tools") which Xymox manufactures or acquires for performance of this contract shall remain the property of Xymox, notwithstanding any charges therefor. Tool charges convey to Buyer the right to have the Tools used by Xymox for performance of this contract, but they do not convey title or right of possession. Xymox shall be responsible for routine maintenance and repair of all Tools, as well as for major overhauls, replacements or changes, but all charges for such work shall be charged to Buyer by separate invoice as such charges are incurred. Unless other specific written arrangements are made, tools will be destroyed eighteen (18) months following the last date of use.
16. Artwork. Due to special mechanical requirements in the manufacture of the products, all artwork submitted by Buyer is subject to approval by Xymox. If additional charges for retouching and/or rework are necessary, Buyer will be notified and billed at cost.
17. Copying. Buyer agrees not to have Xymox's designs copied, or to work with others to have Xymox's designs copied.
18. Waiver. Waiver by Xymox of a breach of any of the terms or conditions of the contract of sale between the Buyer and Xymox shall not be construed as a waiver of any other terms and conditions of the contract.
19. Governing Provisions. **THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN XYMOX AND BUYER, AND SHALL BE GOVERNED BY AND SHALL BE**

CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS AGREEMENT WHICH ARE NOT EXPRESSED HEREIN.