



Xiris Automation Inc.
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Xiris Automation Inc. Detailed Terms and Conditions of Sale

- 1. Orders and Pricing.** All orders are subject to the terms and conditions of this agreement, and are subject to acceptance by XIRIS. No additional or different terms and conditions on the Buyer's purchase orders, including any pre-printed terms and conditions, shall apply. All prices quoted by XIRIS are in the currency as stated on the quotation, and are exclusive of applicable customs duties, brokerage fees, and shipping charges and applicable taxes. The Buyer is responsible for payment of: (a) all applicable sales, use, consumption, goods and service, value added withholding, and all other applicable federal, state, provincial and local taxes, unless the Buyer has provided XIRIS with an appropriate tax exemption certificate or number and (b) all fees and charges related to customs, duties and brokerage. If no currency is stated, prices shall be deemed to be in U.S. dollars. At any time, and from time to time, XIRIS may change any part or all of our product prices without advance notice, based on a change in the product and/or XIRIS' evaluation of Buyer's requirements. Booked orders are shipped at the prices quoted at the time of the booking of the order.
 - 2. Delivery/Risk of Loss.** XIRIS shall deliver all Product Ex-Works Burlington, Ontario, Canada (the "Delivery Location") in accordance with Incoterms 2000. Prepaid shipping charges and insurance paid by XIRIS for destinations beyond the Delivery Location shall be the responsibility of the Buyer and may be invoiced by XIRIS on the invoice for the product or separately. Unless the Buyer takes delivery at the applicable Delivery Location, XIRIS shall be entitled to choose the method of shipping the product and the carrier. For any purchase, all costs of transportation, duties, taxes, imposts or assessments of any kind from the Delivery Location shall be the Buyer's responsibility, and shall be invoiced to the Buyer if paid by XIRIS. XIRIS reserves the right to make deliveries of any of the Buyer's orders in instalments. Responsibility for the product and all risk of loss pass to the Buyer at the applicable Delivery Location, on delivery of the product to the carrier, regardless of whether Buyer has personally taken delivery of the product or whether XIRIS has arranged for shipping and delivery beyond the Delivery Location, as set forth above. Buyer therefore assumes all responsibility for claims against the carrier for loss or damage. Packaging of the Product shall be completed by XIRIS in a reasonable fashion based on XIRIS's experience in packaging the Product.
 - 3. Acceptance of Product; Shortage and Damage Claims.** XIRIS's policy is to take great care in shipping product. Any claims for shortages must be made within ten (10) days of Buyer's receipt of the product. Acceptance of the product is deemed to occur upon delivery to the Buyer. If the shipment of the product delivered by a common carrier is damaged or in tampered condition, do not sign the bill of lading without noting the damaged or tampered condition on the bill of lading. All claims for damaged product should be referred to the common carrier and are not the responsibility of XIRIS. XIRIS will make commercially reasonable efforts to assist in settlement of the claim. Damage claims should be made immediately after receipt of product. This shall not affect any independently arising warranty claim that Buyer may have in accordance with the terms and conditions of this agreement.
 - 4. Return of Product.** All returns of the product must be authorized in advance. XIRIS will authorize a product return only if the product is not the product which had been ordered by the Buyer or if the product is a warranty return and meets all applicable warranty requirements. Product shipped as ordered may not be returned without XIRIS' prior written permission. Any request for authorization of return should be made to XIRIS' Customer Support Department, upon which an RMA number will be issued to the Buyer if XIRIS determines that the return requirements are met. All freight charges on returned Product shall be the Buyer's responsibility, and shall be invoiced to the Buyer if paid by XIRIS. All requests for authorization of return and all returns must include reference to XIRIS' original invoice number.
 - 5. Payment.** Upon credit approval, payment terms are a strict NET 30 DAYS from date of shipment from XIRIS unless stated otherwise in Xiris proposals. Payment shall be made in full and without set-off or deduction. Otherwise, any amount not paid for any reason whatsoever shall bear interest at the lesser of an annual rate of 24% per annum or the maximum rate allowable by law. XIRIS reserves title to all product delivered by XIRIS until payment in full is received by XIRIS.
 - 6. Reservation of Title.** Regardless of when risk of loss passes to the Buyer with respect to the shipped product, XIRIS reserves title to all product shipped under the purchase order until such time as payment in full is received by XIRIS for the shipped product. By signing the purchase order (or the bill of lading under which the product is shipped) or otherwise, in any way, taking delivery of the product, the Buyer creates a purchase money security interest in favour of XIRIS in all product shipped under the purchase order. NOTWITHSTANDING THE FOREGOING, TITLE TO ANY SOFTWARE CONTAINED IN THE PRODUCT SHALL NOT PASS TO THE BUYER OR ANY THIRD PARTY, AND THE BUYER IS HEREBY PUT ON NOTICE THAT THE BUYER'S USE OF ANY SOFTWARE SUPPLIED UNDER THIS AGREEMENT IS GOVERNED BY AND SUBJECT TO THE SOFTWARE LICENSE TERMS AS DESCRIBED IN SECTION 13 HEREIN.
 - 7. Intellectual Property.** The Buyer does not acquire any intellectual property or other proprietary rights under this agreement, including without limitation any right, title or interest in and to patents, copyrights, trade-marks, industrial designs, confidential information, or trade secrets, whether registered or unregistered, relating to XIRIS products, services, or any part thereof. The Buyer's only rights to XIRIS products, services, or any part thereof shall be those rights expressly licensed or granted to the Buyer under this agreement. Any rights not expressly granted under this Agreement are reserved. The Buyer shall not, and shall not permit any third party to, copy, reproduce, distribute, modify, decompile, disassemble or reverse engineer any software provided by XIRIS as part of the product. The Buyer further agrees not to use the product in any way except to facilitate its internal business functions.
 - 8. Indemnity.** XIRIS will defend, indemnify and hold the Buyer harmless with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation attorney's fees and court costs, arising from a claim that the product furnished and used within the scope of this agreement infringe(s) such third party's copyright, patent or other intellectual property right enforceable in the territory in which the Buyer has been authorized to use such product. Notwithstanding the foregoing paragraph, XIRIS shall have no liability for any claim of infringement to the extent based on: (a) use of a superseded or altered release or version of any product if the infringement would have been avoided by the use of a current unaltered release or version of such product or (b) any claim for which the Buyer is obligated to indemnify XIRIS.
- The Buyer shall defend, indemnify and hold XIRIS, its successors, assigns, officers, directors, employees and agents harmless from any and all claims, damages, judgments, settlements, losses or expenses, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of or relating to this agreement, excluding any direct damages to the extent arising from the gross negligence or willful misconduct of XIRIS. Without limiting the foregoing, the Buyer shall specifically defend, indemnify and hold XIRIS, its successors, assigns, officers, directors, employees and agents harmless with respect to amounts required to be paid to a third party, and all costs, expenses, and liability, including without limitation attorney's fees and court costs, arising from: (a) a claim of infringement of any intellectual property or proprietary right arising from the Buyer's combination or use of the product with software, interfaces, or other materials that are not supplied or specifically authorized by XIRIS, (b) a claim of infringement of any intellectual property or proprietary right arising from XIRIS' adherence to specifications provided by the Buyer, (c) a claim respecting any injury, death or property damage in connection with the Buyer's use or misuse of the product, (d) any third party claim arising from the Buyer's unauthorized or improper use or modification of the product, and (e) any third party claim arising out of the Buyer's material breach of this agreement.
- Each party's indemnity obligations hereunder are conditional upon: (a) the indemnified party notifying the indemnifying party in sufficient time to allow the indemnifying party to protect its legal interests; (b) the indemnifying party having sole control of the defense and all related settlement negotiations, provided, however, that the indemnifying party shall act reasonably and in good faith to protect the indemnified party's interests, and (c) the indemnified party providing the indemnifying party with the assistance, information and authority necessary to perform the indemnifying party's obligations under this paragraph. Reasonable out-of-pocket expenses incurred by the indemnified party in providing such assistance will be reimbursed by the indemnifying party.

9. **Limitations of Liability.** Except as expressly stated herein, in no event will XIRIS be liable under this agreement for any damages other than the Buyer's direct damages to the extent arising from XIRIS' gross negligence or willful misconduct, and in no event shall XIRIS' aggregate liability exceed the amounts paid by the Buyer to XIRIS for the products that gave rise to the claim. For greater certainty, XIRIS shall not be responsible in any way whatsoever for the acts or omissions of the Buyer's personnel or any act or thing caused by the Buyer's amendment, installation, service or use in any way whatsoever of the product, including without limitation specifications provided by the Buyer to XIRIS in respect of the product, and the Buyer shall indemnify and save XIRIS harmless from any claims arising from any such acts or omissions. EXCEPT FOR THE LIMITED DIRECT DAMAGES SPECIFIED IN THIS SECTION 9, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL XIRIS BE LIABLE FOR ANY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, DATA, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURED REPUTATION, CUSTOMERS, USE OR OPPORTUNITY, WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN, AND WHETHER OR NOT XIRIS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The Buyer's recovery from XIRIS for any claim shall not exceed the purchase price for the product irrespective of the nature of the claim whether in contract or for warranty or otherwise. No claim may be brought against XIRIS, whether in contract, tort or otherwise, more than two years after the product was delivered.

10. **Use With People.** Product sold by XIRIS may not be designed for use in proximity to people including without limitation for use in products used for life support functions. If the Buyer uses or sells XIRIS product for use in proximity to people, including without limitation for use in products used for life support functions, the Buyer does so at its own risk. The Buyer agrees to fully indemnify XIRIS for damages resulting from any such use or sale.

11. **Warranty.** XIRIS warrants that the shipped product will be free from material defects in material and workmanship in conformance with our specifications for a period of one year (1) from date of shipment by XIRIS (software shall be subject to the software warranty set forth in Section 13). This is the only warranty which XIRIS makes relating to the product. XIRIS make no other warranty, express or implied, and specifically no warranty of merchantability or fitness for a particular purpose. If the Buyer notifies XIRIS of any such material defects or non-conformance with the specifications within such one (1) year period, XIRIS will, at its option, repair or replace the products. Products covered by this warranty must be received by XIRIS within the warranty period. Shipment of defective products to and from XIRIS shall be at the Buyer's expense. No allowances will be made for labour, material, time, damage or transportation claims, nor will product be replaced or rebuilt if the warranty does not apply for any of the reasons described herein. This warranty shall not apply to defects or non-conformities resulting from: (a) improper or inadequate maintenance or installation of the product, (b) use of the product in combination with software, interfaces, or other materials that are not supplied or specifically authorized by XIRIS, (c) unauthorized or improper use or modification of the product, (d) abuse, negligence, accident, or other damage from external sources, including accidents, riots, labour disputes, acts of God and power interruptions, (e) improper preparation of the Buyer's facilities for product installation and use, including inadequate power sources, use with hazardous or explosive chemicals and/or materials and unfit or inadequate environmental control, or (f) unauthorized maintenance or repair of the product. THE WARRANTY SET FORTH IN THIS SECTION 11 IS THE EXCLUSIVE WARRANTY MADE BY XIRIS RESPECTING THE PRODUCT. XIRIS DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY OR CONDITION ARISING BY STATUTE, CUSTOM OR USAGE OF TRADE RELATED TO THE PRODUCT PROVIDED HEREUNDER. Some jurisdictions may not allow the exclusion or limitation of implied warranties and conditions. To the extent permitted by law, any implied warranties or conditions relating to the product to the extent that they cannot be excluded as set out above are limited to one (1) year from the shipment date of such product.

12. **Sales.** Sales are dependent upon XIRIS' ability to deliver, including without limitation, availability of supply to XIRIS. XIRIS shall be under no liability to the Buyer or anyone else nor shall XIRIS be responsible for any penalty whatsoever through failing to make delivery for any reason whatsoever including, without limitation, non-availability of supply, existing or new government legislation or regulations, strikes, lockouts or other labour disturbances. All shipments of Product are subject to XIRIS' approval including, without limitation, XIRIS' credit approval. XIRIS has the right to substitute reasonably equivalent product for those ordered by the Buyer and the Buyer agrees to accept delivery of such substituted product. Orders may not be cancelled or rescheduled by the Buyer after delivery by XIRIS to the Delivery Location. In the event of the necessity of allocation of available Products by XIRIS, orders that are accepted by XIRIS will be accepted using a fair scheduling method. Special orders for product not normally stocked are non-cancellable and non-returnable.

13. **Software.** Software, if any, is transferred by XIRIS to the Buyer pursuant to a single user licence, the royalty, terms and conditions of which are set forth on or in the container in which the software is packaged. TITLE TO SOFTWARE SHALL NOT PASS TO THE BUYER. BUYER'S SOLE RIGHTS TO THE SOFTWARE SHALL BE THE LIMITED RIGHTS SET FORTH IN THE LICENSE AGREEMENT PROVIDED WITH THE SOFTWARE. IF, THROUGH OVERSIGHT, A LICENSE AGREEMENT IS NOT PROVIDED WITH THE SOFTWARE, THE BUYER SHALL HAVE ONLY SUCH RIGHTS TO THE SOFTWARE AS ARE SET FORTH IN XIRIS' STANDARD SOFTWARE LICENSE AGREEMENT, WHICH IS AVAILABLE TO BUYER UPON REQUEST. XIRIS warrants the diskette(s) on which the program is furnished, to be free from defects in materials and workmanship under normal use for a period of ninety (90) days from the date of delivery. XIRIS warrants that our software will operate materially in conformance with our specifications for a period of one (1) year from date of shipment by XIRIS. This software warranty is limited to replacement of any software product following Buyer's notification to XIRIS within the warranty period respecting the software's non-conformance with its specifications, and shall constitute the exclusive remedy for breach of this software warranty. This is the only warranty which XIRIS makes relating to the software, and is subject to all warranty exclusions and disclaimers set forth in Section 11 above.

14. **Installation/Training.** No installation or training is contracted for purchase under the sales order/invoice unless specifically agreed to by XIRIS in writing. Installation and training is available at the prices shown in XIRIS' then-current price list. The Buyer must follow all XIRIS instructions for installation and maintenance of the product. In the event that XIRIS provides specific instructions respecting the product that conflict with the above instructions, Buyer should follow such specific instructions.

15. **Technical Assistance.** XIRIS shall provide to the Buyer a reasonable amount of technical assistance by telephone from XIRIS concerning the use and installation of XIRIS Product, service troubleshooting, and technical assistance. On-site assistance is available at the prices shown in XIRIS' then-current price list.

16. **Separate Purchases.** Each purchase pursuant to this Terms and Conditions shall be considered a separate and independent transaction to be conducted in accordance herewith. All claims of the Buyer for warranty, replacement or shortage shall be applied only to the particular relevant purchase. The Buyer shall not be allowed set-offs between purchases.

17. **Trade Names and Trade Marks.** The Buyer shall not make any use whatsoever (including, but not limited to, use in the Buyer's corporate name or business style and use in advertising, promotion, marketing or sale of the product or any other goods) of any trade name or trade mark owned by, used or licensed to XIRIS. Any usage of XIRIS trade names or trade marks by Buyer must be pursuant to the terms and conditions of a mutually agreed upon, written agreement between Buyer and XIRIS.

18. **Cancellation and Termination.** XIRIS may terminate this agreement upon written notice to the Buyer, and may also stop any product in transit to the Buyer and suspend the delivery of product to the Buyer without penalty, if: (a) Buyer commits a material breach of this agreement and fails to remedy such breach within thirty (30) days of receiving notice of such breach, or (b) Buyer becomes involved in any legal proceeding concerning its solvency, commences liquidation proceedings, has a receiver or administrator appointed of any of its assets, ceases or threatens to cease operations, or otherwise has a serious and reasonable doubt arise respecting its solvency. Upon termination of this agreement for Buyer's breach or insolvency: (a) all of XIRIS' performance obligations hereunder shall immediately cease, (b) Buyer's license to use any software hereunder shall immediately cease, and Buyer shall either return all such software to XIRIS or have an officer of Buyer certify that such software has been destroyed, and (c) any payments then due to XIRIS become immediately payable in full. Except as otherwise specified herein, neither party shall be entitled to terminate or cancel this agreement except with the prior written consent of the other party.