

Terms and Conditions of Product Sales

The following terms and conditions shall apply to the sale of Xeos products by Xeos, unless otherwise agreed to in writing by Xeos.

1. Applicability

The Buyer may place orders (“Order(s)”) with Xeos for Xeos products (“Products”) and all such Orders will be governed solely by the terms and conditions contained herein, unless otherwise agreed to in writing by an authorized representative of Xeos. Xeos shall not be deemed to have waived the terms and conditions contained herein if it fails to object to provisions appearing on, incorporated by reference in, or attached to any Buyer order form, and those provisions are hereby expressly rejected. No contrary or additional terms or conditions contained in any Buyer order form shall apply unless agreed to in writing by an authorized representative of Xeos. Xeos reserves the right to reject any Order submitted to it by Buyer.

2. Delivery

Delivery shall be made within the time specified on Buyer’s Order or in accordance with Xeos’s quoted lead time and monthly delivery rate, whichever is later. Transportation charges shall be prepaid and Buyer shall reimburse Xeos upon receipt of an invoice for such charges. Xeos shall have the right to make early, accelerated and/or partial shipments in advance of the contractual delivery schedule, in its sole and absolute discretion.

3. Inspection

The Buyer shall inspect and accept, or reject Products delivered pursuant to the Order immediately after Buyer takes custody of such Products. In the event the Products do not comply with the applicable Xeos drawings or specifications, the Buyer shall notify Xeos of such nonconformance and give Xeos a reasonable opportunity to correct any such nonconformance. The Buyer shall be deemed to have accepted any Products delivered hereunder and to have waived any such nonconformance in the event Xeos does not receive notification that the Products delivered hereunder do not comply with Xeos’s drawings or specifications, within fifteen (15) days after the Buyer takes custody of such Products. Unless otherwise agreed, Buyer shall have no right to conduct inspection at Xeos’s facility. In the event Xeos agrees that Buyer may inspect Products at Xeos’s facility, any such inspection shall be conducted with reasonable prior notice by Buyer to Xeos and at reasonable times, on a non-

interference basis, and such inspection shall not include the right to establish mandatory inspection points or enter proprietary or competition-sensitive areas of Xeos's facility.

4. Changes

Xeos at all times reserves the right, and is entitled in its sole discretion, to make changes, additions or improvements to the Products being delivered under an Order without liability or any obligation to incorporate such changes, additions or improvements into any item or product manufactured, sold or delivered prior to incorporation of the change, addition or improvement.

5. Prices and Payments

Prices and payments will be in quoted dollars, and payment shall be made in invoiced currency. Invoice terms are net 30 days unless otherwise specified. Prices quoted are believed to be accurate; however, Xeos reserves the right to correct any inadvertent errors in these prices prior to acceptance of the Order. Xeos reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved. In the event payments are not made in a timely manner, Xeos may, in addition to all other remedies provided at law, either: (1) declare Buyer's performance in breach and terminate the Order for default; (2) repossess the goods for which payment has not been made; (3) withhold future shipments under the Order until delinquent payments are made; (4) deliver future shipments under the Order on a cash with Order or cash in advance basis even after the delinquency is cured; (5) charge interest on the delinquency at a rate of 1-1/2% per month or the maximum rate permitted by law, if lower, for each month or part thereof of delinquency in payment plus applicable storage charges, or inventory carrying charges; or (6) recover all costs of collection including reasonable attorney's fees; and (7) at Xeos's option combine any of the above rights and remedies as provided by law.

6. Setoff

All amounts that Buyer owes Xeos under an Order shall be due and payable according to the terms of the Order. Buyer is prohibited from and shall not set off such amounts or any portion thereof, whether or not liquidated, against sums which Buyer asserts are due it, or its affiliates, under other transactions with Xeos, or its affiliates.

7. Warranty

As used in this Section "Nonconformance" means a failure to comply with or failure to operate due to noncompliance with applicable Xeos drawings or having defects in workmanship or

material. Normal wear and tear and the need for regular overhaul and periodic maintenance shall not constitute a Nonconformance.

Xeos warrants that at time of delivery to Buyer, its Products will comply with applicable Xeos drawings and will be free from defects in workmanship and material. This warranty shall benefit the Buyer, its successors, and assigns. This warranty is valid for twelve (12) months after Xeos's shipment of the Product. The warranty period for Xeos's repair or replacement of a failed Product only, covered by the warranty, shall be the unexpired portion of the original warranty or 6 months after shipment of the repaired or replaced Product, whichever is longer.

Buyer must notify Xeos in writing of the Nonconformance of any Product within the warranty period and return the Product to Xeos within thirty (30) days after such discovery. Prior to return of the Product to Xeos, Buyer must obtain a Return Material Authorization (RMA) from Xeos. Xeos reserves the right to return to Buyer any Product received without a valid RMA. In the event Xeos is unable to confirm Buyer's reported Nonconformance, Buyer agrees to pay Xeos an Evaluation/No Defects Found Charge, the amount of which shall be as specified in Xeos's Return Material Authorization. Xeos's obligation and Buyer's remedy under this warranty is limited to either repair or replacement, at Xeos's election, of any Product Nonconformance. Xeos agrees to assume round trip transportation costs for a nonconforming Product in an amount not to exceed normal shipping charges to the nearest facility designated herein for warranty repair of products delivered under an Order. The risk of loss or damage to all Products in transit shall be borne by the party initiating the transportation of such Products.

Xeos shall not be liable under this warranty if the Product has been exposed or subjected to:

1. Any maintenance, repair, installation, handling, transportation, storage, operation or use which is improper or otherwise not in compliance with Xeos's instruction; or
2. Any alteration, modification or repair by anyone other than Xeos or those specifically authorized by Xeos; or
3. Any accident, contamination, foreign object damage, abuse, neglect or negligence after delivery to Buyer; or
4. Any damage precipitated by failure of a Xeos supplied Product not under warranty or by any product not supplied by Xeos.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE WHICH ARE HEREBY EXPRESSLY DISCLAIMED. IN NO EVENT SHALL XEOS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND. NO EXTENSION OF THIS WARRANTY SHALL BE BINDING UPON XEOS UNLESS SET FORTH IN WRITING AND SIGNED BY XEOS'S AUTHORIZED REPRESENTATIVE.

8. Excusable Delay

Xeos shall be excused from delays in delivery and performance of other contractual obligations under an Order caused by acts or omissions that are beyond the reasonable control and without the fault or negligence of Xeos, including but not limited to Government embargoes, blockades, seizure or freeze of assets, delays or refusals to grant an export license or the suspension or revocation thereof, or any other acts of any Government, fires, floods, severe weather conditions, or any other acts of God, quarantines, labor strikes or lockouts, riots, strife, insurrection, civil disobedience, war, material shortages or delays in deliveries to Xeos by third parties. If the excusable delay circumstances extend for six months, either party may, at its option, terminate the Order without penalty or liability and without being deemed in default or in breach thereof.

9. Cancellation

Buyer has the right to cancel any portion of an Order affected by a default of Xeos or any insolvency or suspension of Xeos's operations or any petition filed or proceeding commenced by or against Xeos under any provincial, state or federal law relating to bankruptcy, arrangement, reorganization, receivership or assignment for the benefit of creditors.

10. Disputes

Except as otherwise specifically agreed in writing by Xeos, any dispute relating to an Order placed by a Buyer incorporated in Canada which is not resolved by the parties shall be adjudicated by any court of competent jurisdiction. For Orders placed by a Buyer incorporated outside of Canada, the parties shall resort to binding arbitration under mutually agreed procedures.

11. Applicable Law

This Agreement shall be interpreted in accordance with the laws of Nova Scotia and Canada, exclusive of any choice of law provisions. The Xeos and Buyer expressly agree to exclude from this Agreement the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

12. Export

Unless otherwise agreed, Buyer shall be responsible for compliance with the export control laws and regulations of Canada, and when required by such laws and regulations shall obtain validated export and re-export licenses required for goods, services and technical data delivered under the Order. Xeos shall not be liable to Buyer for any failure to provide goods, services or technical data as a result of any following Canadian Government actions: (1) refusal to grant export or re-export license; (2) cancellation of export or re-export license; or (3) any subsequent interpretation of Canadian export laws and regulations, after the date of the Order, that limits or has a material adverse effect on the cost of Xeos's performance on the Order.

13. Limitation of Liability

Xeos's liability on any claim for loss or damage arising out of, connected with, or resulting from an Order, or from the performance or breach thereof, or from the manufacture, sale, delivery, resale, repair or use of any Product covered by or furnished under an Order shall in no case exceed the price allocable to the Product or part thereof which gives rise to the claim, except as provided in the paragraph entitled "Patent Indemnity." In no event shall Xeos be liable for special, incidental or consequential damages. Except as herein expressly provided to the contrary, the provisions of the Order are for the benefit of the parties to the Order and not for the benefit of any other person.

14. Nondisclosure and Non-use of Xeos Information

Buyer agrees that it will not use Xeos's data for the manufacture or procurement of Products which are the subject of an Order or any similar products, or cause said products to be manufactured by or procured from any other source, or reproduce said data and information or otherwise appropriate them without the written authorization of the Xeos. Buyer agrees that it will not disclose or make available to any third party any of Xeos's data or other information pertaining to the Order, which is proprietary to Xeos, without obtaining Xeos's prior written consent.

15. Patent Indemnity

Except insofar as an Order calls for products pursuant to Buyer's designs, drawings or specifications, Xeos agrees to pay the amount of any final judgment against Buyer resulting from a suit claiming that any Products manufactured or furnished hereunder, by reason of their manufacture, sale or use, infringes any Canadian patent which has issued at date of contract, and Buyer's reasonable costs and expenses in defense of such suit if Xeos does not undertake

the defense thereof, provided Xeos is promptly notified of the threat of commencement of such suit and is offered full and exclusive control to conduct the defense or settlement thereof.

Xeos's indemnity shall not apply where infringement would not have occurred from the normal use for which the Products were designed. No responsibility is assumed for actual or alleged infringement of any foreign patent. Xeos's liability for damages hereunder is limited to those computed solely on the value of any Products sold to Buyer. In no event shall Xeos be liable for consequential damages or costs applicable thereto. In the event of any claim that a Product furnished hereunder infringes any Canadian patent, Xeos may at its option and expense: (a) procure for Buyer the right to continue using the Product, or (b) replace or modify the Product so that it becomes non-infringing, or (c) grant Buyer a credit for such Product, less a reasonable depreciation for use, damage, and obsolescence upon its return to Xeos. Buyer agrees to pay all costs and expenses incurred by Xeos in its defense and the amount of any judgment against Xeos, in any suit or proceeding against Xeos based upon a claim of infringement, resulting solely from the Buyer combining any Product furnished hereunder with any item not manufactured or furnished by Xeos or from the sale or use of any such combination by Buyer. Xeos shall also indemnify Buyer's Buyers and agents for such infringement, if and to the extent that Buyer has agreed so to indemnify them, but to no greater extent than Xeos has indemnified Buyer herein and under the same conditions as set forth herein. In the event any product to be furnished under an Order is to be made in accordance with drawings, samples or manufacturing specifications designated by Buyer and is not the design of Xeos, Buyer agrees to defend, indemnify and hold Xeos harmless to the same extent and subject to the same requirements as set forth in Xeos's obligation to Buyer as above. The above is in lieu of any other indemnity or warranty, express or implied by Xeos, with respect to intellectual property (patents, trade secret, mask works, trademarks, copyrights, or the like).

16. Software License

In the event that any software or software documentation is provided to Buyer by Xeos in any form whatsoever under an Order and no software license agreement governing this sale has been signed between Buyer and Xeos, Buyer agrees to accept the terms and conditions stated below effective the date of the first delivery hereunder:

1. Subject to the terms and conditions herein, Xeos grants to Buyer a nonexclusive, nontransferable license to use the software or software documentation provided herein: (i) in the course of the normal operation in or with Products which are installed, or are intended to be installed, on aircraft, (ii) in the analysis or the formatting of reports using data from such Products or, (iii) on Xeos or non-Xeos products that are used to test,

maintain, download, or process information compiled by Products.

2. Making copies of software or documentation except for one copy for archive purposes is prohibited unless specifically authorized by Xeos in writing. Should such copying be authorized, Buyer will reproduce and include all Xeos proprietary and copyright notices and other legends in the same manner that Xeos provides such notices and legends, both in and on every copy of licensed software and documentation and in any form.
3. The software license and rights granted by Xeos to Buyer hereunder are personal to Buyer. The licensed software and documentation may not be sub-licensed, transferred, or loaned to any other party without Xeos's prior express written consent, except that Buyer may transfer the licensed software and documentation in conjunction with the resale of any flight equipment or Xeos supplied test equipment in which the licensed software and documentation is installed or with which it is used. Such permission to transfer is contingent upon the resale or transfer of Buyer's agreement to use and protect the confidentiality of the licensed software and documentation under the same or similar terms as those set forth in this software license. Buyer will, however, notify Xeos in writing of the transfer of the licensed software and documentation.
4. Buyer agrees to utilize all licensed software and documentation only as authorized herein. Buyer may not either itself or with the assistance of others, make modifications to the licensed software and documentation, including, but not limited to, translating, decompiling, disassembling or reverse assembling, reverse engineering, creating derivative or merged works, or performing any other operation on licensed software and documentation to recover any other operation on licensed software and documentation to recover any portion of the program listing, object code or source code or any information contained therein.
5. Buyer agrees to accept and retain licensed software and documentation in confidence. Buyer agrees to take appropriate action by instruction, agreement or otherwise with Buyer's employees, or agents or other persons who are permitted access to licensed software and documentation as follows to inform said employees, agents or other persons who may come into contact with it of the confidential nature of licensed software and documentation; and to satisfy its obligations under this software license with respect to use, copying, and protection and security of licensed software and documentation.
6. This software license is effective as of the date of first delivery hereunder and shall continue until terminated by Buyer for any reason whatsoever upon thirty (30) days prior written notice to Xeos, provided Buyer ceases using and either returns or destroys Xeos software and documentation; or by Xeos, if Buyer does not comply with any of the terms and conditions of this software license and Buyer fails to remedy such failure within thirty (30) days after having received notice from Xeos of such failure.
7. Notwithstanding the warranties provided elsewhere herein, Buyer acknowledges that licensed software and documentation may be aircraft or sensor specific and, as such, may

require reasonable adjustment or refinement to suit Buyer's specific requirements. Buyer shall provide reasonable aid to Xeos in accomplishing such adjustments and refinements. Such reasonable adjustments or refinements shall commence on the date of delivery and be provided by Xeos to Buyer for a period not to exceed ninety (90) days unless otherwise provided for in writing.

8. Buyer agrees that it will not use the licensed software and documentation in the performance of a contract, or subcontract, with any Government in a manner so as to affect Xeos's rights to licensed software and documentation. If Buyer desires to use the licensed software or documentation in the performance of a contract or subcontract with a Government, prior to such use, Buyer shall consult with Xeos as to the procedures and use of restrictive markings required to protect the ownership interest of Xeos and receive written confirmation from Xeos of same.
9. This license and sale is subject to the laws and regulations, and other administrative acts, now or hereinafter in effect, of Canada and other governments and their departments and agencies relative to the exportation and/or re-exportation of licensed software and documentation. Buyer acknowledges that it will be responsible for compliance as necessary with such laws, regulations and administrative acts.
10. Xeos agrees to use reasonable efforts to secure any licenses or permits as may now or hereafter be required by the Canadian Government in connection with the performance of Xeos obligations under an Order, but this will not be deemed to require any performance on the part of Xeos which cannot lawfully be done pursuant to the laws, regulations and acts referred to above.

17. Special Tooling and Data

Unless otherwise agreed in writing, all material, software, data processes, equipment, facilities and special tooling, which term includes but is not limited to jigs, dies, fixtures, molds, patterns, special taps, special gages, special test equipment, other special equipment and manufacturing aids and replacements thereof, used in the manufacture of products covered by an Order, shall be and remain the property of Xeos. Xeos retains all rights, title and interest in drawings, engineering instructions, specifications, and all other written data, if any, furnished with the products.

18. Taxes

The prices quoted herein do not include sums necessary to cover any taxes or duties including but not limited to Federal, Provincial, Municipal excise, sales or use taxes or import duties upon

the production, sales, distribution, or delivery of goods or furnishing of services hereunder. Any taxes or duties that are due and owing hereunder shall be paid by the Buyer. Accordingly, Xeos reserves the right to revise its price after the execution of an Order between the parties to include any and all taxes or duties that may become due hereunder and Xeos may invoice Buyer for said additional amount. This clause shall survive the acceptance and complete performance of an Order by the parties herein.

19. Assignment

Neither Xeos or the Buyer shall assign an Order or any portion thereof without the advance written consent of the other, which consent shall not be unreasonably withheld. The non-assigning party shall not have any obligation to an assignee of the assigning party unless such consent is obtained.

20. Waiver

Failure by Xeos to assert all or any of its rights upon any breach of an Order shall not be deemed a waiver of such rights either with respect to such breach or any subsequent breach, nor shall any waiver be implied from the acceptance of any payment or service. No waiver of any right shall extend to or affect any other right Xeos may possess, nor shall such waiver extend to any subsequent similar or dissimilar breach.

21. Severability

If any provision of these Conditions of Sale is determined to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, and all other provisions shall remain in full force and effect.