



# VIXS Systems Inc.

## Terms and Conditions of Sale

### 1. ACCEPTANCE

The terms and conditions set out herein will apply to all purchase orders issued by the entity identified therein ("Buyer") and acknowledged by VIXS Systems, Inc. ("VIXS"), as provided below, whether for goods and/or for services ("Goods"). No purchase order (in the form received from Buyer), or other documentation submitted by Buyer to VIXS, (collectively, "Purchase Order" or "PO") will be binding on VIXS in any way. Any acceptance by VIXS of a Purchase Order is strictly conditional upon Buyer accepting VIXS' counter offer ("Order"), consisting of these Terms and Conditions of Sale, any additional terms in the Order Acknowledgment (as defined below) and any additional and consistent terms and conditions to the foregoing that are contained in the PO terms and conditions. Such counteroffer may only be made by an authorized employee of VIXS, or of one of VIXS' subsidiaries, and will be issued in the form of a VIXS order acknowledgment (regardless of form, "Order Acknowledgment"). Buyer may accept the counteroffer by written acknowledgment, or by acceptance of or payment for any of the Goods, or in any other fashion. In any event, Buyer will be deemed to have accepted the counteroffer unless it is rejected in writing within ten (10) days of Buyer's receipt of the Order Acknowledgment.

The acceptance by Buyer of the Order will revoke any provision(s) in the Purchase Order that purported to limit or restrict an acceptance by VIXS to the original terms and conditions of the PO. Terms and conditions within any Purchase Order that are different than or in conflict with the terms and conditions contained herein, and/or in the Order Acknowledgment, are hereby expressly rejected and will not be binding upon VIXS in any way without its specific written consent. Buyer agrees that VIXS' failure to specifically object to any such different or conflicting terms or conditions submitted by Buyer will not constitute or be deemed to be an acceptance thereof by VIXS.

Without limiting any other rights or remedies available to VIXS, whether under these terms and conditions or otherwise, VIXS reserves the right, in its sole discretion, to reject any Purchase Order, whether in whole or in part, to cancel any unfiled Order, whether in whole or in part, and/or to suspend any delivery of Goods, whether in whole or in part, in the event of any breach by Buyer of its obligations to VIXS under the Order or otherwise.

### 2. ORDER DETAILS

When VIXS issues an Order Acknowledgment, the Order will be characterized by VIXS as either: (a) a "Single Shipment Order", or (b) an "Extended Period Blanket Order" (or "EPB Order"). An EPB Order will be for Goods in quantities requested by Buyer to meet Buyer's anticipated requirements over an extended period of time (the "Order Period"). Unless otherwise agreed to in writing by VIXS and Buyer, the Order Period for EPB Orders will extend from the date the first Goods are made available for shipment to Buyer, to the earlier of: (a) the date the final Goods are made available for shipment, or (b) the end of twelve (12) months thereafter. VIXS' obligations to fill an Extended Period Blanket Order will end when the Order Period expires, unless VIXS and Buyer have expressly agreed in writing to extend the Order Period, which agreement VIXS may withhold for any reason in its sole discretion.

Order Acknowledgments will include the date(s) that VIXS will make Goods available for shipment to Buyer ("Committed Date"). Unless otherwise specified in the Order Acknowledgment, VIXS may make partial deliveries available for shipment to Buyer, whether with respect to a Single Shipment Order or an EPB Order. The terms and conditions of the Order will apply separately to each such delivery.

VIXS reserves the right to modify the specifications of the Goods from time to time without notice to Buyer. Buyer agrees that Orders may be filled by VIXS notwithstanding any such modifications, provided that such modifications do not materially affect the performance, form or fit of the Goods.

### 3. SHORT LEAD TIME ORDER, AMENDMENTS, TERMINATION

#### 3.1 Short Lead Time Order

If Buyer submits a Purchase Order having a Requested Lead Time that is less than the applicable Standard Lead Time ("Short Lead Time Order"), then any Order Acknowledgment that VIXS, in its sole discretion, elects to issue, will be subject to the following terms and conditions:

- 3.1.1 VIXS will make commercially reasonable efforts to have the Goods available for shipment to Buyer by the specified Committed Date (or, in the absence of a Committed Date, by the Requested Date); and
- 3.1.2 Any established price between Buyer and VIXS for the Goods will be increased as follows, to compensate VIXS for its increased costs:
  - (a) if the Requested Lead Time is up to two (2) weeks shorter than the Standard Lead Time, then there will be no increase in the price of the Goods;
  - (b) if the Requested Lead Time is between more than two (2) weeks and up to four (4) weeks shorter than the Standard Lead Time, then the price of the Goods will increase by five percent (5%);
  - (c) if the Requested Lead Time is between more than four (4) weeks and up to six (6) weeks shorter than the Standard Lead Time, then the price of the Goods will increase by ten percent (10%); and
  - (d) if the Requested Lead Time is more than six (6) weeks shorter than the Standard Lead Time, then Buyer will require a custom quote from VIXS.

In these Terms and Conditions of Sale: (a) "Requested Lead Time" means the difference between the date of receipt of a Purchase Order by VIXS and the requested available-for-shipment date for Goods ("Requested Date"), and (b) "Standard Lead Time" means 16 weeks, unless otherwise specified by VIXS to Buyer in writing.

#### 3.2 Amendments

If Buyer desires to change any element of the Order before it has been filed in its entirety by VIXS, then the following terms and conditions will apply. No Order will be considered amended unless and until: (a) VIXS, in its sole discretion, elects to issue an amended Order Acknowledgment, or (b) VIXS and Buyer otherwise expressly agree in writing to amend the Order. Any amended Order Acknowledgment issued by VIXS will constitute the entire amendment of the Order, unless otherwise expressly agreed in writing by VIXS and Buyer.

- 3.2.1 No change and no rescheduling will be allowed for any Order (or part thereof) less than thirty (30) days before the earlier of the applicable Requested Date and Committed Date.
- 3.2.2 If Buyer desires to reduce the quantity of Goods being purchased under the Order, then VIXS will be entitled, in addition to any other rights or remedies available to it, to collect from Buyer under the amended Order an amount equal to the difference between: (a) the total price paid by Buyer for the original quantity of Goods to be purchased under the Order (including but not limited to the total price paid for any Goods previously delivered for shipment), and (b) the total (higher) price for such Goods commensurate with the reduced quantity actually being purchased by Buyer under the Order. Notwithstanding the provisions of this Paragraph 3.2.2, as provided above VIXS may elect to refuse, in its sole discretion, to reduce the quantity of Goods being purchased under the Order.
- 3.2.3 If Buyer desires to accelerate any Committed Date in the Order ("Pull-in Request"), and such Order is not a Short Lead Time Order (i.e., Pull-in Requests may not be made for Short Lead Time Orders), then the amended Order will be subject to the following terms and conditions:
  - (a) VIXS will make commercially reasonable efforts to meet the amended Committed Date for the Pull-in Request; and
  - (b) The price for the Goods affected by the Pull-in Request will be increased as follows, to compensate VIXS for its increased costs:
    - (i) if the Pull-in Request is received between six (6) and twelve (12) weeks before the Committed Date, and the amended Requested Date is:
      - (1) up to two (2) weeks earlier than the original Committed Date: (1) and the Standard Lead Time is still satisfied, then there will be no increase in the price of the Goods, or (2) and the Standard Lead Time is not still satisfied, then the price of the Goods will increase by five percent (5%);
      - (2) up to four (4) weeks earlier than the original Committed Date, then the price of the Goods will increase by five percent (5%); or
      - (3) between more than four (4) weeks and up to six (6) weeks earlier than the original Committed Date, then the price of the Goods will increase by ten percent (10%). Pull-in Requests may not be made if the amended Requested Dates are more than six (6) weeks earlier than the original Committed Date; or
      - (ii) if the Pull-in Request is received less than six (6) weeks before the Committed Date, then the price of the Goods will increase by fifteen percent (15%).

Notwithstanding the provisions of this Paragraph 3.2.3, as provided above VIXS may elect to refuse, in its sole discretion, to accelerate any Committed Date in the Order.

- 3.2.4 Buyer may request changes to other elements of the Order by providing VIXS with a written request (as provided below) no less than ninety (90) days before the earlier of the Requested Date or Committed Date. The only Order change Buyer may request with less

written notice is a one-time rescheduling of the Committed Date to a future available-for-shipment date. Such a rescheduling request must be received by VIXS no less than thirty (30) days before the earlier of the Requested Date and the Committed Date, and the revised Requested Date must be no more than thirty (30) days after the original Committed Date. Buyer will provide VIXS with an amended Purchase Order clearly identifying Buyer's amended requirements. VIXS, in its sole discretion, will either: (a) accept Buyer's revision(s) to the Order, and/or come to an agreement with Buyer on any amended terms and conditions required by VIXS, by issuing an amended Order Acknowledgment to confirm and document such acceptance/agreement; or (b) advise Buyer in writing that it is unable or unwilling to agree to Buyer's amended requirements, in which case VIXS may, in its sole discretion, either: (i) require the full performance of the Order, or (ii) terminate the Order immediately upon written notice to Buyer, in which case the provisions of Paragraphs 3.3.1, 3.3.2 and 3.3.3 below will apply and VIXS' written notice will constitute "Notice of Early Termination" for the purpose of those paragraphs.

#### 3.3 Termination

If Buyer desires to terminate the Order before it has been filed in its entirety by VIXS, then Buyer must provide VIXS with no less than ninety (90) days prior written notice ("Notice of Early Termination"). In such an event, the following terms and conditions will apply:

- 3.3.1 VIXS, at its sole discretion, will be entitled to deliver for shipment to Buyer any or all Goods which were scheduled for delivery for shipment during the ninety (90) day period following receipt of Notice of Early Termination;
- 3.3.2 Buyer will remain liable to pay VIXS for all Goods delivered for shipment pursuant to the Order, including but not limited to any Goods delivered for shipment in accordance with Paragraph 3.3.1. In addition to any other rights or remedies available to it, VIXS will be entitled to require Buyer to pay to VIXS upon demand the difference between: (a) the total price paid by Buyer for Goods purchased under the Order (including but not limited to the total price paid for any Goods previously delivered for shipment), and (b) a total (higher) price for such Goods commensurate with the reduced quantity actually purchased by Buyer under the Order; and
- 3.3.3 VIXS, at its sole discretion, will be entitled to: (a) require Buyer to pay to VIXS upon demand, not as a penalty but as liquidated damages (which amount the parties acknowledge to be a fair and reasonable estimate of the damages likely to arise from the expenses incurred and commitments made by VIXS up to the date of receipt of the Notice of Early Termination), an amount equal to fifteen percent (15%) of the total price to have been paid by Buyer for the original quantity of Goods to be purchased under the Order; and/or (b) seek to enforce any other rights and remedies against Buyer available to VIXS, whether hereunder or otherwise.

#### 3.4 Custom Products

Notwithstanding the provisions set out in Paragraphs 3.1, 3.2 and 3.3 above, if the Order is for Goods which have been manufactured to meet Buyer's specific requirements, including but not limited to Buyer's design requirements, and Buyer seeks to modify, limit, or cancel its Order in whole or in part, then VIXS reserves the right to charge Buyer for the cost of all finished Goods manufactured by VIXS in reasonable anticipation of Buyer's requirements under the Order, and for the costs of associated raw materials and work-in-progress.

### 4. TERMS OF PAYMENT

All prices for Goods will be shown on the Order Acknowledgment. Unless otherwise agreed to and expressly stated therein, VIXS must receive payment in full for the Goods prior to their Committed Date. If timely payment is not received then VIXS, in addition to any other rights and remedies available to it, reserves the right to cancel or suspend the Order in whole or in part. Each delivery for shipment is considered a separate and independent transaction and payment therefore will be made accordingly.

Net thirty (30) day credit terms may be established for certain buyers. If net thirty (30) day credit terms are established, payments are due upon delivery for shipment and are payable within thirty (30) days thereof. Buyer must not assume that net thirty (30) day credit terms have been established unless specifically referred to in the applicable Order Acknowledgment.

VIXS reserves the right to charge interest of one and a half percent (1.5%) per month, or the highest rate permitted by law, whichever is lower, on all overdue accounts.

All Orders, and any credit terms, are subject to and conditional upon VIXS approving Buyer's credit worthiness. If VIXS, at any time, is not satisfied with Buyer's credit worthiness, then VIXS may cancel or suspend deliveries for shipment and/or credit terms, and/or VIXS may impose such other terms and conditions or require such security arrangements as VIXS, in its sole discretion, deems appropriate.

All taxes, levies, duties, charges and costs of any kind and nature whatsoever applicable to the Goods ("Taxes and Charges") will be Buyer's sole responsibility. Unless clearly identified in the Order Acknowledgment, the prices shown therein will not include Taxes and Charges. All payments received are non-refundable. VIXS accepts payments only in such manner as may be specified by VIXS from time to time and does not accept credit notes, credit memos, or equivalent as mode of payment.

To the extent an Order is made in relation to a service, the service fee: (a) is non-refundable, and (b) when invoiced, represents that a separate and distinct performance obligation under the Order has been discharged.

### 5. OTHER AGREEMENTS

These terms and conditions, as well as additional terms and conditions of any Order, are intended to supplement, but are expressly made subordinate and subject to, the terms and conditions contained in: (a) any applicable Software license agreement(s), and (b) any non-disclosure, other license, VAR, OEM, development, support, beta test and/or distribution agreement(s), ((a) and (b) collectively, "Other Agreements") which may have previously or subsequently entered into by Buyer and VIXS. The acceptance by Buyer of the terms and conditions of the Order will also indicate that Buyer has accepted and agrees to abide by any Other Agreements that were provided to Buyer with any Software. The Other Agreements will supersede any inconsistent terms and conditions of the Order in respect of the specific Goods to which they relate and while the Other Agreements are subsisting.

All Software is provided to Buyer under license, and is not sold. Buyer may only use and transfer Software strictly in accordance with the terms and conditions in the applicable Other Agreement(s). Such agreements will be specific to the Software provided and to its permitted uses. Until such Software agreements are in place, and the terms therein accepted by Buyer, Buyer cannot use, copy, distribute or otherwise deal with any Software. In no event will the Order, including but not limited to the terms and conditions herein, be interpreted to convey any right, title, interest or grant any license in, to or under the Software, or any associated intellectual property rights therein, over and above those contained in any Other Agreement or Software license accepted by Buyer. The terms and conditions of the Order will not be construed to imply a license to use the Software in the absence of a license. Seller expressly rejects any license to use the Software that may be implied by the terms and conditions of the Order.

The term "Software", as used herein, means computer programs in machine readable code, provided on magnetic, optical or other storage media, embedded in semiconductor device(s) or otherwise delivered or made available by or on behalf of VIXS for use in association with the Goods. "Software" includes but is not limited to all documentation used to describe, maintain and use such programs as well as any improvements, revisions, updates and enhancements that may be made available by or on behalf of VIXS to Buyer for use in conjunction with the Goods.

### 6. DELIVERY

- 6.1 All shipments of Goods are made Ex Works (location to be specified by VIXS) Incoterms® 2010 ("Ex Works"), unless otherwise expressly stated in the Order Acknowledgment. For Ex Works shipments, the risk of (and liability for) loss or damage of Goods, whether in transit or thereafter, will pass to Buyer when Goods are picked up by or for Buyer at the specified location. Buyer is responsible for: picking up Goods at the specified location, loading of Goods, all procedures and obligations associated with export of Goods, transport of Goods and all associated costs. For shipments which are not made Ex Works, the risk of (and liability for) loss or damage of Goods will pass to Buyer in accordance with the shipping terms expressly stated in the Order Acknowledgment.
- 6.2 Buyer agrees that notwithstanding any other terms and conditions of the Order, VIXS retains all right, title and interest (including but not limited to all intellectual property rights and rights of possession) in and to: (a) the Software, and (b) any and all tooling of every kind and nature used in the development, manufacture, production and/or testing of any Goods, including but not limited to mask works, art works, fixtures and jigs.
- 6.3 Once the Committed Date is established, VIXS will make commercially reasonable efforts to accommodate Buyer's choice of carrier or freight forwarder. However, Buyer hereby authorizes VIXS, without notice to Buyer, to choose and retain in its sole discretion on behalf of Buyer a carrier or freight



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forwarder for shipment of Goods to Buyer. ViXS will not bear any obligations or liabilities for any losses, damages, costs, claims or expenses suffered or incurred by Buyer directly or indirectly in connection with any failure, act or omission on the part of the carrier or freight forwarder retained by ViXS on Buyer's behalf.

- 6.4 Committed Dates in any Order Acknowledgment are approximate only. While ViXS agrees to make commercially reasonable efforts to meet Buyer's desired shipping schedule, in no event will ViXS be liable for losses, damages, costs, claims or expenses of any kind or nature due to any delays in delivery, nor will ViXS be treated as in breach of its obligations to Buyer hereunder.
- 6.5 ViXS may, in its sole discretion, agree to keep a delivery for shipment of Goods at ViXS' factory upon Buyer's written request, provided that Buyer pays ViXS for all costs associated with such shipment delays and storage of Goods in such amounts as may be solely determined by ViXS.

### 7. SHORT SHIPMENT CLAIMS

Buyer will inspect all shipments immediately upon receipt. In the event of a short shipment, claims must be made directly to ViXS, in writing, within five (5) working days after Buyer's receipt of the Goods.

### 8. MINIMUM ORDER QUANTITY

ViXS reserves the right to specify minimum order quantities ("MOQ") and fixed reorder quantities in its sole discretion. Acceptance of Orders for less than applicable MOQ is in ViXS' sole discretion.

### 9. WARRANTY

- 9.1 Subject to the limitations and exclusions below, including but not limited to those in Paragraphs 9.5 and 12, ViXS warrants to Buyer that the Goods will be free of defects in material and workmanship, and will perform in all material respects as specified in ViXS' corresponding data sheet(s), for a period of six (6) months from the date of their delivery for shipment by ViXS (the "Warranty Period"). ViXS' sole obligation, and Buyer's sole remedy, for any breach of this warranty will be, at ViXS' option, to either (a) repair or replace any defective Goods, or (b) reimburse the price paid by Buyer to ViXS for any defective Goods.
- 9.2 To be eligible under the limited warranty in Paragraph 9.1 ("Limited Warranty"), Buyer must return Goods to ViXS within the Warranty Period. Before any Goods are returned, a Return Material Authorization Number ("RMA Number") must be obtained from ViXS. If an entire shipment is being returned based on a Quality Assurance Sampling Process, the defective Goods which were sampled must first be sent to ViXS, at Buyer's expense, for testing by ViXS. Once tested by ViXS, and provided an RMA Number is issued, the entire shipment may be returned in accordance with ViXS' standard procedures. Goods that have been used, damaged or subjected to any production process are not eligible for return.
- 9.3 The final determination as to whether Goods are defective, and in breach of the Limited Warranty, rests solely with ViXS, acting reasonably.
- 9.4 The Limited Warranty will automatically become null and void if the Goods: (a) are used in an unreasonable manner, (b) are used for a purpose other than their intended purpose, (c) are used in a manner that exceeds their maximum ratings specified by ViXS' corresponding data sheet(s), or (d) were purchased from a source not authorized by ViXS. The Limited Warranty does not apply to: (i) SDK's purchased from ViXS, (ii) Goods submitted as samples, design verification units or prototypes, (iii) Goods submitted free of charge to Buyer for evaluation, (iv) Goods sold under the conditions of a waiver, or (v) Software (as defined in Paragraph 5 above), even if included or provided for use with any Goods.
- 9.5 EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED IN PARAGRAPH 9.1, ALL GOODS ARE PROVIDED BY ViXS "AS IS" WITHOUT ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. OTHER WRITTEN OR ORAL STATEMENTS BY ViXS OR ITS AFFILIATES, OR THEIR OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS, DISTRIBUTORS, OR LICENSORS (COLLECTIVELY, "ViXS AND ITS REPRESENTATIVES"), DO NOT CONSTITUTE AND WILL NOT BE DEEMED TO BE REPRESENTATIONS OR WARRANTIES OF ViXS. THIS PARAGRAPH 9 PROVIDES BUYER'S SOLE REMEDY FOR ANY BREACH OF WARRANTY AND IS IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES OF ViXS AND ITS REPRESENTATIVES TO BUYER WHATSOEVER AND HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THE SALE OF THE GOODS, THE USE OF THE GOODS OR OTHERWISE, WHETHER ARISING FROM CONTRACT, TORT OR OTHERWISE. THIS PARAGRAPH 9.5 WILL SURVIVE AND APPLY NOTWITHSTANDING TERMINATION OF ANY ORDER AND/OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### 10. NON-WARRANTY RETURNS

Except for confirmed breaches of the Limited Warranty, Goods will not be accepted for return without the express prior written approval of ViXS, which may be withheld in its sole discretion for any reason. Buyer must obtain an RMA Number from ViXS before returning any Goods. A restocking fee equal to thirty-five percent (35%) of the sale price of the returned Goods will apply if ViXS accepts the return of any Goods for non-warranty reasons.

### 11. INTELLECTUAL PROPERTY

- 11.1 ViXS makes no express or implied representation, warranty or condition that the Goods will not infringe any patent, copyright or other intellectual property rights. ViXS agrees, however, to use commercially reasonable efforts to ensure the Goods do not infringe trademarks or copyrights, or misappropriate confidential information.
- 11.2 Subject to the provisions, limitations and exclusions of the Order, including but not limited to those in Paragraphs 9.5, 11.3, 11.4 and 12, if the Goods or any portion thereof become, or in ViXS' opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or other intellectual property right, or if the use of the Goods or any part thereof is enjoined in any such infringement proceedings, then ViXS, at its option and expense, will: (a) procure for Buyer the right to continue to use such Goods; (b) replace such Goods with non-infringing Goods; or (c) accept the return of the affected Goods and refund to Buyer the depreciated value thereof.
- 11.3 ViXS will not be liable under the Order, including but not limited to under this Paragraph 11, or otherwise for any infringement claim to the extent: (a) based on any open source software or third party proprietary products or technologies delivered by ViXS as part of or for use with any Goods; (b) based on the combination of any Goods with other products or technologies not supplied by ViXS; (b) based on any modification of any Goods by or for Buyer by a third party; (c) based on any modifications made to any Goods at the request of Buyer, or in order to comply with a direction or specification issued by Buyer; (d) based on any manufacturing process applied to any Goods by or for Buyer; (e) such claim has been made by a third party in response to an initial claim by Buyer that the third party infringes any intellectual property owned or controlled by Buyer; or (f) based on any published and industry recognized standard/recommendation, including but not limited to standards/recommendations of ITU, IEEE, ETSI, ISO, MPEG, CSS, DVD, DivX, Dolby, AVC/H.264, HEVC/H.265, ATM Forum, Frame Relay Forum, SMPTE, ATSE, GSM, IETF, etc.
- 11.4 PARAGRAPHS 11.1 AND 11.2 PROVIDE BUYER'S SOLE REMEDY FOR ANY INTELLECTUAL PROPERTY INFRINGEMENT BY THE GOODS AND ARE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES OF ViXS TO BUYER WHATSOEVER AND HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THE SALE OF THE GOODS, THE USE OF THE GOODS OR OTHERWISE, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.
- 11.5 Buyer, will, at its expense, indemnify, and hold ViXS harmless from and against all losses, damages, costs, claims and expenses directly or indirectly resulting from any alleged infringement of any patent, copyright or other intellectual property rights arising as a result of ViXS' compliance with any of Buyer's designs, specifications or instructions, and Buyer will at the sole option of ViXS defend, at its own expense including but not limited to legal fees) any suit brought against ViXS alleging any such infringement, provided that ViXS gives Buyer notice of any such suit and permits Buyer, through counsel of Buyer's choice, to defend (on ViXS' behalf) such suit. Nothing in the Order will take away ViXS' right (at Buyer's cost) to defend itself through counsel of ViXS' choice in any such matter.

### 12. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS, TERMS OR CONDITIONS SET OUT IN THE ORDER OR AT LAW, IN NO EVENT WILL ViXS OR ITS REPRESENTATIVES BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST REVENUE, OR OTHER COMMERCIAL OR ECONOMIC LOSS, ARISING DIRECTLY OR INDIRECTLY OUT OF OR RELATING TO ANY BREACH OF THE ORDER (FUNDAMENTAL OR OTHERWISE), ANY TORTIOUS ACTS OR OMISSIONS OF ViXS OR ITS REPRESENTATIVES, OR ANY USE OR INABILITY TO USE OR OBTAIN ANY GOODS, EVEN IF ViXS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS, TERMS OR CONDITIONS SET OUT IN THE ORDER OR AT LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF ViXS AND ITS REPRESENTATIVES TO BUYER OR ANY THIRD PARTY FOR ANY AND ALL COSTS, LOSSES AND DAMAGES ARISING DIRECTLY OR INDIRECTLY OUT OF OR RELATING TO ANY BREACH OF ANY ORDER (FUNDAMENTAL OR OTHERWISE), ANY TORTIOUS ACTS OR OMISSIONS OF ViXS OR ITS REPRESENTATIVES, OR ANY USE OR INABILITY TO USE OR OBTAIN ANY GOODS, EVEN IF ViXS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR CLAIM, EXCEED THE TOTAL AMOUNT BUYER HAS PAID TO ViXS UNDER THE ORDER FOR THE GOODS GIVING RISE TO THE CLAIM. ViXS ASSUMES NO RESPONSIBILITY FOR USE OF THE GOODS.

THIS PARAGRAPH 12 WILL SURVIVE AND APPLY NOTWITHSTANDING TERMINATION OF ANY ORDER AND/OR THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

### 13. FORCE MAJEURE

ViXS will not be liable for any failure to make Goods available or to deliver Goods, or for any loss, damage, delay or consequential loss, damage or delay caused or arising from any act of God, strike, lockout, labour dispute, sabotage, riot, civil unrest, insurrection, war, other military action, fire, tempest, accident, equipment failure, yield problems, inability to obtain materials components, energy shortage, statutory intervention, government regulation, delay of delivery of materials or services, or any other reason beyond its reasonable control. If ViXS' production is curtailed for any reason, ViXS may allocate Goods to its buyers in whatever manner ViXS sees fit, in its sole discretion.

### 14. SEVERABILITY

The invalidity or unenforceability of any provision set out in the terms and conditions of the Order will not affect the validity or enforceability of any other provisions.

### 15. BREACH AND TERMINATION

Any one of the following will constitute a breach of Buyer's obligations to ViXS under the terms and conditions of the Order:

- 15.1 Failing to pay ViXS for any Goods or to fulfil any other payment obligation when payment is due;
- 15.2 Failing to pick up Goods when made available by ViXS for shipment, or to accept Goods when shipped on Buyer's behalf;
- 15.3 The filing of a voluntary or involuntary petition in bankruptcy against Buyer, the institution of any proceedings under insolvency or bankruptcy legislation (including but not limited to reorganization) by or against Buyer, or the making of an assignment by Buyer for the benefit of its creditors; or
- 15.4 Any other act in violation of or which breaches any of the provisions of the terms and conditions of the Order.

If Buyer breaches any obligation owed to ViXS under the terms and conditions of the Order, or otherwise, ViXS may, without any liability to ViXS and in addition to any other rights or remedies available to ViXS, immediately suspend, cancel or terminate the Order, in whole or in part, by providing written notice to Buyer. Without limiting any other rights and remedies available to ViXS, Buyer will pay all costs, including but not limited to reasonable legal fees, incurred by ViXS in any action brought by ViXS to collect payments owing or to otherwise enforce its rights hereunder. If the Order is terminated for any reason, including but not limited to under this Paragraph or under Paragraphs 3.2.4 or 3.3, the provisions of Paragraphs 3, 4, 6, 7, 9, 10, 11.5, and 12 to 19 will survive.

### 16. GOVERNING LAW

The terms and conditions of the Order will be governed by and interpreted in accordance with the laws of the Province of Ontario, Canada. In addition, Buyer hereby attorns to the courts of the Province of Ontario, Canada and, without limiting the generality of the foregoing, Buyer specifically agrees that the courts of the Province of Ontario, Canada, will have jurisdiction over any and all legal proceedings which may arise with respect to matters set out in the Order. Neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Convention on the Limitation Period in the International Sale of Goods, as either may from time to time be modified or amended, will apply to the terms and conditions of the Order or the transactions contemplated by the terms and conditions of the Order.

### 17. ASSIGNMENT

Buyer will not assign any Order, in whole or in part, any interest therein or any rights or obligations thereunder, to any third party without the prior written consent of ViXS.

### 18. WAIVER

No waiver by either party of any breach of any term or condition of the Order by the other party will constitute or be deemed to be a waiver of any other breach, nor will any delay or omission on the part of either party to exercise or avail itself of any right or remedy under the Order operate as a waiver thereof. No waiver given by a party hereunder will be binding upon such party unless expressed in writing and signed by such party.

### 19. ENTIRE AGREEMENT

The terms and conditions of the Order comprises the complete and final agreement of the parties relating to the subject matter hereof and supersedes any oral or implied agreements and any inconsistent or conflicting provisions of any Purchase Orders. Buyer agrees that ViXS' failure to specifically object to any terms or conditions within any Purchase Order that are inconsistent or conflicting with the terms and conditions of the Order will not constitute or be deemed to be a waiver of, or a modification to, any of the provisions of the Order. No amendment of the Order will be valid unless in writing and duly signed by an authorized representative: (a) of ViXS in the case of modifications contemplated herein to be made by Amended Order Acknowledgement, or (b) by authorized representatives of ViXS and the Buyer in the case of other amendments. The terms and conditions of the Order will not be supplemented by any usage of trade or any course of prior dealings or acquiescence in any course of performance.

ViXS TCS.Jan27-15