

XPC Terms & Conditions

PLEASE READ THESE TERMS AND CONDITIONS OF PRODUCT SALES VERY CAREFULLY. THE TERMS AND CONDITIONS OF PRODUCT SALES ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN. BY ACCEPTING DELIVERY OF THE PRODUCTS FROM THE XTREME POWER AFFILIATE IDENTIFIED ON THE INVOICE OR OTHER XTREME POWER DOCUMENTATION, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS OF PRODUCT SALES UNLESS EXPRESSLY AGREED TO IN WRITING BY AN AUTHORIZED XTREME POWER OFFICER, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information

These Terms and Conditions of Product Sales constitute a binding contract between Customer and Xtreme Power and are referred to herein as either "Terms and Conditions of Product Sales" or this "Agreement." Customer accepts these Terms and Conditions of Product Sales by making a purchase, placing an order or otherwise shopping on Xtreme Power's Website (the "Site"). These Terms and Conditions of Product Sales are subject to change without prior notice, except that the Terms and Conditions of Product Sales posted on the Site at the time Customer places an order will govern the order in question, unless otherwise agreed in writing by Xtreme Power and Customer. Customer consents to receiving electronic records, which may be provided via Web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting Xtreme Power. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Service and Support

IN THE EVENT THAT ADDITIONAL SERVICES ARE PROCURED OUTSIDE OF THOSE COVERED UNDER SPECIFIC PRODUCT WARRANTY, EITHER INDEPENDENTLY OR IN CONJUNCTION WITH THE PURCHASE OF PRODUCTS, SUCH SERVICES SHALL BE ON AND SUBJECT TO THE "TERMS AND CONDITIONS OF SERVICE." Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. Customer agrees that the Terms and Conditions of Product Sales contained herein and in Xtreme Power's invoice or other Xtreme Power documentation will control. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Terms and Conditions of Product Sales or any purchase order or invoice related thereto. This Agreement supersedes all prior communications (whether verbal, written or electronic) between the parties related to the products.

Governing Law

THESE TERMS AND CONDITIONS OR PRODUCT SALES AND ANY SALE OF PRODUCTS

HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF COLORADO, WITHOUT REGARD TO CONFLICTS OF LAWS OR RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN THE CITY AND COUNTY OF DENVER, COLORADO, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Except in the case of nonpayment, neither party may institute any action in any form arising out of these Terms and Conditions of Product Sales more than one year after the cause of action has arisen. The rights and remedies under these Terms and Conditions of Product Sales are cumulative, are in addition to, and do not limit or prejudice any other right or remedy available to Xtreme Power at law or in equity.

Title; Risk of Loss

Title to products and risk of loss or damage during shipment pass from Xtreme Power to Customer upon shipment from Xtreme Power's facility (F.O.B. Origin, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s) and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer. Xtreme Power retains a security interest in the products until payment in full is received.

Payment

Orders are not binding upon Xtreme Power until accepted by Xtreme Power. Customer agrees to pay the total invoiced purchase price for the products, plus shipping (to the extent shipping is not prepaid by Customer). Terms of payment are within Xtreme Power's sole discretion. If you breach the provisions of this Agreement or the terms of any offer, Xtreme Power may charge or re-debit your account or credit card the full list price for your purchase (in lieu of a discounted or special price included in the offer). Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, subject to continuing credit approval by Xtreme Power. Xtreme Power may invoice Customer separately for partial shipments. Customer agrees to pay interest on all past-due sums at the lower of 1.5% per month or at the highest rate allowed by law. Customer will pay for, and will indemnify and hold Xtreme Power and its affiliates harmless from, any applicable sales, use, transaction, excise or similar taxes and any federal, state or local taxes, fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with the order or the products. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and provide Xtreme Power with the necessary supporting documentation. Any sales, use or other applicable tax or fees or assessments is based on the location to which the order is shipped. In the event of a payment default, Customer will be responsible for all of Xtreme Power's costs of collection, including, but not limited to, court costs, filing fees and attorney fees.

Export Sales

If this transaction involves an export of items (including, but not limited to commodities, software or

technology), subject to the Export Administration Regulations, such items were exported from the United States by Xtreme Power in accordance with the Export Administration regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. The list of such countries subject to United States economic sanctions or embargoes may change from time to time, but currently includes Cuba, Iran, Sudan, and Syria. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported products may vary or may be null and void for products outside the United States.

Warranties

The terms and conditions of warranties on each Product shall be set by the manufacturer of each Product. Reference the warranty of each applicable Product in its corresponding user manual.

Pricing Information; Availability Disclaimer

Xtreme Power reserves the right to make adjustments to pricing and products for reasons including, but not limited to, changing market conditions, product discontinuation, product unavailability, and errors in advertisements. All orders are subject to product availability. Therefore, Xtreme Power cannot guarantee that it will be able to fulfill Customer's orders.

Limitation of Liability

UNDER NO CIRCUMSTANCES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, WILL XTREME POWER, ITS AFFILIATES, SUPPLIERS, SUBCONTRACTORS OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, EVEN IF XTREME POWER HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE. IN EACH CASE, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY CONCLUSIONS OR RECOMMENDATIONS BY XTREME POWER OR ITS AFFILIATES IN CONNECTION WITH THE PRODUCTS; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED OR CORRUPTED DATA OR SOFTWARE. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF ANY LIABILITY INCURRED BY XTREME POWER OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF XTREME POWER AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT

EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM; OR (B) \$50,000.

Confidential Information

Each party anticipate that it may be necessary to provide access to information of a confidential nature of such party, its affiliates or of a third party, (hereinafter referred to as "Confidential Information") to the other party in the performance of this Agreement. "Confidential Information" means any information or data in oral, electronic or written form which the receiving party knows or has reason to know is proprietary or confidential and which is disclosed by a party in connection with this Agreement or which the receiving party may have access to in connection with this Agreement. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by personnel of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible; however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

Each party agrees to hold such Confidential Information confidential for a period of three years following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind. Disclosures of Confidential Information will be restricted: (i) to those individuals who are participating in the performance of this Agreement and need to know such Confidential Information for purposes of providing or receiving the products or otherwise in connection with this Agreement; or (ii) to its business, legal and financial advisors, each on a confidential basis. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

If a receiving party is required by law, rule or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority, to disclose the Confidential Information, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure.

Damaged Products

Products are shipped F.O.B. Origin. If Customer receives damaged product, a claim should be filed with the carrier, according to their policies and procedures.

Arbitration

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including, but not limited to, statutory, common law, intentional tort and equitable claims) arising from or relating to the products, the interpretation or application of these Terms and Conditions of Product Sales or the breach, termination, validity thereof, the relationships which result from these Terms and Conditions of Product Sales (including to the full extent permitted by applicable law, relationships with

third parties who are not signatories hereto), or Xtreme Power's or any of its affiliates' advertising or marketing (collectively a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF ANY ONE OF XTREME POWER, CUSTOMER OR THE THIRD PARTY INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association. If arbitration is chosen by any party with respect to a Claim, neither Xtreme Power nor Customer will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties involved. Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Notwithstanding any choice of law provision included in these Terms and Conditions of Product Sales, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. §§ 1-16). The arbitration will take place exclusively in Denver, Colorado. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party involved will bear its own costs of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to Xtreme Power arising out of sales hereunder will be exclusively litigated in court rather than through arbitration.

Software

All software is provided subject to a license agreement and you agree that you will be bound by such license agreement.

Trademarks; Copyrights

You may use the "Xtreme Power" name and Xtreme Power's product names solely for the purpose of accurately identifying the Xtreme Power-branded products you market and/or sell under this Agreement. You agree to change or correct, at your own expense, any material or activity that Xtreme Power decides is inaccurate, objectionable or misleading or a misuse of Xtreme Power's name, trademarks, service marks, or Xtreme Power's logos or copyrighted works. You may not use the Xtreme Power name and Xtreme Power's product names for any other purpose. You may not use other Xtreme Power trademarks or service marks or Xtreme Power's logos or copyrighted works at any time. You are prohibited from referring to yourself as an authorized reseller of Xtreme Power, implying that you and Xtreme Power are partners, creating the impression that Xtreme Power is affiliated with your or has sponsored, authorized, approved or endorsed your business, or any offer or any marketing, advertising or promotion thereof, You may not register or use any domain name or business name containing or confusingly similar to any name or mark of Xtreme Power's. You will clearly and prominently identify yourself in all offers and advertising, marketing and promotional materials relating to this Agreement.

Your Indemnity to Xtreme Power

To the fullest extent permitted by law, you will indemnify, defend and hold Xtreme Power, including Xtreme Power's partners, officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, debt or liability (including

reasonable attorney fees, expenses and court costs) arising from: (a) your modification(s) of and/or addition(s) to Products(s); (b) your breach of this Agreement; (c) your omissions, misrepresentations, or negligence; and (d) the Products sold by you damage a third party to the extent such claim is based on (i) your modification of and/or addition to the Products, misuse or abuse of the Products, negligence or breach of any provision in t his Agreement; (ii) your failure to abide by all applicable laws, rules, regulations, and orders that affect the Products; (iii) your omission, misrepresentation, or negligence; or (iv) you or your end-users cause intentional harm to any person or property. Indemnified claims, debts and liabilities include the amount of any discount in price or concession that is made available by Xtreme Power to you.

Miscellaneous

Xtreme Power may assign or subcontract all or any portions of its rights or obligations with respect to the sale of Products or assign the right to receive payments, without Customer's consent. Customer may not assign these Terms and Conditions of Product Sales, or any of its rights or obligations herein without the prior written consent of Xtreme Power. Subject to the restrictions in assignment contained herein, these Terms and Conditions of Product Sales will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of this Agreement will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties. The relationship between Xtreme Power and Customer is that of independent contractors and not that of employer/employee, partnership or venture. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision of this Agreement.