



## Terms and Conditions of Sale (Asia Pacific)

**1. TERMS.** The sale or license of products or services described in a proposal, a purchase order or on the face hereof (the “Products”) by Seller to Buyer is governed by the following terms and conditions. Seller expressly rejects any additional or different items or conditions proposed by Buyer unless specifically agreed upon in a separate written instrument by Seller.

**2. PRICES.** Unless otherwise stated on the face hereof, Seller’s prices are F.O.B. Shipping Point, (INCOTERMS) exclusive of freight, insurance and local delivery charges, if any.

**3. TAXES.** All applicable sales, use, excise, gross receipts and other taxes are the responsibility of the Buyer and Buyer shall promptly pay or reimburse Seller for payment of any such taxes on demand. If Buyer claims an exemption from such taxes, an exemption certificate must be furnished to Seller.

**4. PAYMENT.** Orders are invoiced at the time of shipment. Payment of invoices will be due within thirty (30) days of the date of invoice, unless otherwise stated in writing by Seller. The price for Product is payable only in U.S. currency. Any amounts not paid when due shall be considered delinquent and shall be subject to an interest rate of 1.5% per month (or the highest rate permitted by law), or part thereof, that the amount remains delinquent. Additionally, Seller reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment or invoice where same becomes due. Should Buyer’s financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the goods theretofore delivered.

**5. SHIPMENT.** Any shipment date reflected on the face hereof represents the Seller’s best estimate as of the date hereof. Seller shall not incur any liability for failure to ship on a particular date unless a firm shipping date has been expressly agreed to in a separate written agreement. Risk of loss shall pass to Buyer when the Products are placed in the possession of a common carrier. Claims against the carriers shall be the responsibility of Buyer.

**6. WARRANTIES.** Seller hereby warrants to Buyer with respect to the Product that: (i) it has good and marketable title to the Product shipped to Buyer hereunder; (ii) at the time of shipment to Buyer, the Product will meet Seller’s then current specifications; and (iii) the Product is free from defects in material and workmanship under normal use and service

pursuant to the Warranty Policy attached hereto. THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, COLLATERAL, STATUTORY OR OTHERWISE, AND WHETHER IN CONTRACT, TORT OR OTHERWISE. SALE OF THE PRODUCT IS MADE ON THE UNDERSTANDING THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES THAT THE PRODUCT DELIVERED HEREUNDER WILL BE MERCHANTABLE OR FIT FOR ANY PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY.** Seller will not in any event be liable to Buyer, to Buyer’s affiliates or third parties for special, indirect or consequential damages (including but not limited to lost profits, manufacturing costs, damage to goodwill or loss of business) or product recall costs whether based on the use of any Product or any goods incorporating Product (whether or not Product conforms to Seller’s specifications and warranties set forth herein) or on Seller’s late delivery or non-delivery of Product. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS AND CONDITIONS OF SALE, IN NO EVENT SHALL SELLER’S AGGREGATE LIABILITY TO BUYER EXCEED THE AGGREGATE PAYMENTS RECEIVED BY OR OWED TO SELLER FOR PRODUCTS SOLD HEREUNDER.

**8. INDEMNITY.** A. Buyer will indemnify, defend and hold harmless Seller, its affiliates and their respective officers, directors, employees, agents and representatives from and against any and all liability, damage, loss, cost or expense (including reasonable attorneys’ fees and costs) of any kind or nature whatsoever arising out of any third party claims or suits resulting from (a) Buyer’s negligent act or omission in connection with the purchase, storage, use sale, shipment, promotion, or distribution of Product sold hereunder or of any goods (including their manufacture and sale) in which Product is incorporated; (b) product liability claims relating to the manufacture, promotion or sale of Buyer’s goods incorporating Products; (c) claims of contributory infringement or inducement of infringement against Seller based on infringement by Buyer of any third party intellectual property right(s) covering Buyer’s goods incorporating Product, including all materials or intermediates produced or used in their manufacture (excluding Product) or method(s) for its manufacture or use; and (d) Buyer’s breach of Section 12 of these Terms and Conditions of Sale. B. NOTICE OF



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CLAIM. Promptly after receiving notice of any claim or lawsuit to which this Section applies, Seller will notify Buyer in writing, and Buyer will immediately assume responsibility at its sole expense for the handling and defense of such claim or suit on behalf of Seller. The parties will fully cooperate with each other in such defense.

**9. FORCE MAJEURE.** Either party's failure to perform its obligations hereunder (except to make payments hereunder) shall be excused to the extent and for the period of time such nonperformance is caused by an event of force majeure, including but not limited to war, invasion, fire, explosion, flood, riot, strikes, acts of God, delays or defaults of carriers, energy shortage, failure or curtailment in Seller's usual sources of supply, acts of government, its agencies or instrumentalities, or contingencies or causes beyond such party's reasonable control; provided, however, that the non-performing party notifies the other party in writing promptly following the commencement of such force majeure.

**10. INTELLECTUAL PROPERTY.** Seller warrants that the sale of the Product hereunder will not infringe on any third party intellectual property right(s), but in the event that it is alleged that such sale constitutes infringement of such third party intellectual property right(s), then Seller's liability to Buyer shall: (a) be limited to the defense of such infringement actions and the payment of damages awarded therefor by a court of competent jurisdiction from which no appeal is or can be taken, or the settlement of such action, as Seller shall elect; and (b) arise only if Buyer promptly gives Seller written notice of such claim and full authority, information and assistance for the defense and/or settlement of such claim; provided, however, that Seller shall have no liability for alleged infringement arising or resulting from (i) Seller's compliance with Buyer's or other third party designs, specifications, instructions or technical information; (ii) modifications made to the Product by Buyer; (iii) a use of the Product by Buyer that is not in conformity with the specifications provided by Seller; or (iv) Buyer's use of the Product in conjunction with products, software or services that are not provided by Seller. The foregoing states the entire liability of Seller with respect to intellectual property right(s) infringement by said Product. Seller does not warrant against infringement by reason of any use of the Product or of its combination with any other Product or in the operation of any process. Seller reserves the right to suspend deliveries hereunder, or to terminate this contract, if Seller believes that the manufacture and/or sale by Seller, or the use by Buyer, of any Product sold

hereunder infringes any third party intellectual property right(s).

**11. SOFTWARE.** Any use of software that is a Product or embodied within a Product shall be governed by the applicable End User License Agreement accompanying the Products, attached hereto or available at <http://www.xrite.com/TermsAndConditions> ("EULA"). All hosted software services are available to Buyer and subject to the applicable Software as a Service Agreement attached hereto or available at <http://www.xrite.com/TermsAndConditions> ("SaaS Agreement"). Notwithstanding any other term or condition herein, neither title to the software, nor proprietary rights to the software, shall be transferred to Buyer. Software comprises proprietary information and technology of Seller and Buyer may be required to adhere to certain nondisclosure obligations set forth in the aforementioned license agreement.

**12. COMPLIANCE WITH EXPORT LAWS.** Buyer shall comply with all applicable export laws, restrictions and regulations of any United States or other applicable foreign agency or authority. Buyer agrees that it shall not export or re-export, or allow the export or re-export of any product, technology or information it obtains or learns from Seller in violation of any such laws, restrictions or regulations.

**13. GOVERNING LAW.** This Agreement shall be governed by, and interpreted in accordance with the laws of the Hong Kong Special Administrative Region.

**14. DISPUTE RESOLUTION.** Any disputes arising out of or relating to this Agreement or the breach thereof shall be settled through friendly consultations between the parties. In case no conclusion can be reached within a period of sixty (60) days from the date on which the dispute arose, such dispute shall be referred to Hong Kong International Arbitration Centre in accordance with the rules in effect at the time of the application. The arbitration award shall be final and binding upon both Parties.

**15. ASSIGNMENT.** Buyer shall not (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written



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consent of Seller, and any attempted assignment or delegation without such consent shall be void.



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### Warranty Policy

Seller warrants this Product against defects in material and workmanship for a period of twelve (12) months from the date of shipment from X-Rite's facility, unless mandatory law provides for longer periods. During such time, Seller will either replace or repair at its discretion defective parts free of charge.

X-Rite's warranties herein do not cover failure of warranted goods resulting from: (i) damage after shipment, accident, abuse, misuse, neglect, alteration or any other use not in accordance with X-Rite's recommendations, accompanying documentation, published specifications, and standard industry practice; (ii) using the device in an operating environment outside the recommended specifications or failure to follow the maintenance procedures in X-Rite's accompanying documentation or published specifications; (iii) repair or service by anyone other than Seller or its authorized representatives; (iv) the failure of the warranted goods caused by use of any parts or consumables not manufactured, distributed, or approved by X-Rite; (v) any attachments or modifications to the warranted goods that are not manufactured, distributed or approved by X-Rite. Consumable parts and Product cleaning are also not covered by the warranty.

X-Rite's sole and exclusive obligation for breach of the above warranties shall be the repair or replacement of any part, without charge, which within the warranty period is proven to X-Rite's reasonable satisfaction to have been defective. Repairs or replacement by Seller shall not revive an otherwise expired warranty, nor shall the same extend the duration of a warranty. Seller may use new or refurbished parts at its discretion.

Buyer shall be responsible for packaging and shipping the defective product to the service center designated by X-Rite. Seller shall pay for the return of the product to Buyer if the shipment is to a location within the region in which the Seller service center is located. Buyer shall be responsible for paying all shipping charges, duties, taxes, and any other charges for

products returned to any other locations. Proof of purchase in the form of a bill of sale or receipted invoice which is evidence that the unit is within the Warranty period must be presented to obtain warranty service. Do not try to dismantle the Product. Unauthorized dismantling of the equipment will void all warranty claims. Contact the Seller Support or the nearest Seller Service Center, if you believe that the unit does not work.

THESE WARRANTIES ARE GIVEN SOLELY TO BUYER AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, AND NON-INFRINGEMENT. NO EMPLOYEE OR AGENT OF X-RITE, OTHER THAN AN OFFICER OF X-RITE, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING.

IN NO EVENT WILL SELLER BE LIABLE FOR ANY OF BUYER'S MANUFACTURING COSTS, OVERHEAD, LOST PROFITS, GOODWILL, OTHER EXPENSES OR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES BASED UPON BREACH OF ANY WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT TORT, OR ANY OTHER LEGAL THEORY. IN ANY EVENT OF LIABILITY, SELLER'S MAXIMUM LIABILITY HEREUNDER WILL NOT EXCEED THE PRICE OF THE GOODS OR SERVICES FURNISHED BY SELLER GIVING RISE TO THE CLAIM.