



# Terms and Conditions of Sale

For LTX-Credence Products

January 1, 2015

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## Scope

These Terms and Conditions of Sale, in their entirety, apply to all bids, quotations, and orders for the sale, license, or leasing of Products from LTX-Credence. Separate terms and conditions are applicable for LTX-Credence services. Except as specifically set forth in a document signed by the authorized representatives of both parties, these terms and conditions represent the sole understanding between the LTX-Credence and customer with respect to the sale, licensing, or leasing of Products.

## Effective Date

These Terms and Conditions of Sale, in their entirety, are dated as of January 1, 2015, and are applicable to any bids, quotations, or orders from LTX-Credence provided to customer after such date. This document is subject to change without notice. For a given order, the effective Terms and Conditions of Sale are those in effect on the date of the applicable quotation.

## Definitions

### Customer

The "Customer" is the corporation, individual, partnership, person, or entity purchasing, leasing, or licensing Products from LTX-Credence, and designated as the "Customer" on the Sales Order form.

### LTX-Credence

"LTX-Credence" is a division of Xcerra Corporation, a Massachusetts corporation with its principal place of business at 825 University Avenue, Norwood, Massachusetts 02062, U.S.A., and its subsidiaries.

### Products

"Products" are all LTX-Credence Products or combinations of Products. Products include Systems (which alone are capable of performing or conducting automated semiconductor test equipment functions), and Subsystems (which are physically separable principal components of Systems and may be ordered either separately or as part of a System). This document, in its entirety, applies to all Products.

### Price List

"Price List" or "LTX-Credence's Price List" is LTX-Credence's pricing for Products as defined in LTX-Credence's internal information systems.

## Customer Responsibilities

### Suitability for Applications

It is the sole and exclusive responsibility of the Customer to determine the suitability of any and all LTX-Credence Products for the Customer's intended applications.

### Facilities Requirements

The Customer is responsible for all facility requirements to ensure proper operation of LTX-Credence Products. This includes: floor space allocation, air conditioning, electrical

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needs, etc. Additional explanation and requirements may be found in the appropriate site preparation guide for the Product purchased.

### **Problem Diagnosis**

Diagnosing problems is the Customer's responsibility. Should the Customer be unable to diagnose a problem with the assistance of LTX-Credence's remote diagnostics capability, on-site Field Service support will be provided at no charge during the labor warranty period, by LTX-Credence or its designated representative, during LTX-Credence's normal business hours.

### **Not for Resale or Transfer**

The Customer represents and warrants to LTX-Credence that LTX-Credence's Products are not being purchased by the Customer for resale or any other transfer of such Products to any third party, and that such Products are not being purchased by the Customer on behalf of any such third party (except when such Products are to be used solely by the third party on behalf of such Customer). Unless LTX-Credence expressly agrees otherwise in writing, LTX-Credence's Warranty with respect to Products sold to the Customer is not transferable to any third party.

### **Pricing Policies**

The prices for all Products to be delivered to the Customer shall be either:

- The prices stated to the Customer in an authorized LTX-Credence quotation, if LTX-Credence's acceptance of the Customer's order occurs within thirty 30 days of the date of the quotation, or
- If no authorized quotation of LTX-Credence is in effect and applicable, the prices stated in LTX-Credence's Price List in effect at the time of LTX-Credence's acceptance of the Customer's order.

All prices set forth in LTX-Credence's Price List are subject to change at any time without notice.

### **Taxes and Charges**

Prices do not include any tax or other governmental charge or assessment, including sales, use, excise, personal property, or similar taxes (collectively, "tax") upon the sale, shipment, production, or use of any of the Products ordered by the Customer. The Customer shall be solely responsible for, and will pay to LTX-Credence any such tax (other than any such tax on LTX-Credence's income). If the Customer claims that its purchase of any of LTX-Credence's Products is exempt from such tax, the

Customer must provide to LTX-Credence an appropriate and valid certificate of exemption issued by or acceptable to the appropriate taxing authority.

### **Order Policies**

#### **LTX-Credence's Acceptance of Customer Order**

The offer by LTX-Credence to sell or provide the Customer any Products and the acceptance by LTX-Credence of any order from the Customer for any Products is expressly conditioned upon the Customer's agreement to accept and be bound by these Terms and Conditions of Sale. The placement of an order by the Customer shall constitute the Customer's assent to these Terms and Conditions of Sale.

#### **Modifications and Substitutions**

LTX-Credence reserves the right, as it may deem necessary or appropriate, to modify, or change the specifications of any Products ordered by the Customer prior to delivery.

#### **Customer Cancellation**

In the event the Customer should cancel any order for any standard Product at any time after acceptance of such order by LTX-Credence, the Customer shall be obligated to pay LTX-Credence cancellation charges in accordance with the following schedule, based on the number of days between the date of receipt by LTX-Credence of written notice of cancellation, and the scheduled date of delivery:

31 days or more:	10% of list price
30 days or less:	30% of list price

Cancellation charges are payable upon receipt by LTX-Credence of the Customer's notification of cancellation. Notwithstanding anything herein to the contrary, all orders for Custom and Special Order Products are non-cancellable. "Custom and Special Order Products" means those Products produced exclusively for sale to Customer, discontinued or obsolete Products, Products not normally offered for sale to the public, or any Product sold pursuant to a quotation indicating that any order for the Product is non-cancellable.

#### **Customer Rescheduling**

Any delivery rescheduling requested by the Customer will also be subject to a service charge in accordance with the schedule of charges listed below, based on the number of days between the date of receipt by LTX-Credence of the Customer's written request for rescheduling and the

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original scheduled date of delivery. Any such written request must state the Customer's agreement to pay, upon the rescheduled delivery of the Products, LTX-Credence's prices in effect at the time of such delivery.

31 to 90 days:	5% of list price
30 days or less:	10% of list price

Any request to reschedule beyond 90 days of the original scheduled delivery date shall be treated as a cancellation, subject to the charges detailed in the Customer Cancellation section.

## **Shipment, Delivery and Acceptance**

### ***Shipping Terms***

All Products shall be delivered Ex Works, LTX-Credence's Production Site (Incoterms). The Customer shall pay, and be exclusively liable for, all costs of shipping, delivery, insurance, customs, duty fees, and all other charges, after LTX-Credence has effected the delivery of the Products to the carrier.

### ***Insurance and Shipment***

Unless the Customer provides to LTX-Credence written instructions specifying the method of shipment or transport, type and provider of transportation insurance, and/or the carrier, LTX-Credence shall have the right to effect delivery of its Products using methods of shipment or transport, types and providers of insurance, and carriers as LTX-Credence in its sole discretion may deem appropriate.

### ***Delivery***

Deliveries of Products ordered by the Customer will generally be made in accordance with the deliveries scheduled by LTX-Credence and communicated to the Customer. LTX-Credence will attempt in good faith to effect deliveries approximately in accordance with such schedule, but such schedule may vary due to, among other things, conditions beyond LTX-Credence's reasonable control. In no event shall LTX-Credence be responsible or liable for any delays or failures to effect delivery in accordance with such schedule, or for any failure to notify the Customer of any such delay or failure. In the event of any delay or failure to effect delivery due to any cause which is unavoidable or beyond LTX-Credence's reasonable control, LTX-Credence will have the right, at its option, without penalty or any liability for breach, either to terminate all or any part of its obligation

to sell the Products ordered by the Customer or to reschedule delivery of such Products to a later date.

Unless otherwise specifically stated in writing by the Customer, LTX-Credence will have the right to effect the delivery of Products in any number of separate shipments, and LTX-Credence may separately deliver to and invoice the Customer for, under these Terms and Conditions of Sale, any partial order or partial Product which, whether alone or in combination with previously delivered Products of LTX-Credence, is of utility to the Customer.

### ***Title***

Title to all Products sold by LTX-Credence to the Customer will pass to the Customer when such Products are delivered to the carrier for shipment to the Customer.

If, however, the Customer should fail to pay any amount due when it is due, to LTX-Credence on account of such Products, LTX-Credence shall have, in addition to any other rights of LTX-Credence, the right to repossess such Products. In addition, until the Customer has paid to LTX-Credence the entire amount due to LTX-Credence for such Products, LTX-Credence shall retain, and the Customer grants to LTX-Credence, a security interest in such Products to secure payment in the amount of the full purchase price plus all other amounts due under these Terms and Conditions of Sale and all costs of collection incurred by LTX-Credence (including but not limited to reasonable attorneys' fees), and LTX-Credence shall retain all rights and remedies of a secured party under the Uniform Commercial Code, as in effect at the time of delivery of such Products.

A copy of LTX-Credence's invoice for Products sold to the Customer may be filed with the appropriate authorities at any time as a financing statement or chattel mortgage to perfect LTX-Credence's security interest. In addition, upon the request of LTX-Credence, the Customer will execute appropriate financing statements and other documents necessary for LTX-Credence to perfect its security interest.

### ***Risk of Loss***

All risk of loss or damage to Products sold by LTX-Credence to the Customer shall be assumed by the Customer upon LTX-Credence's delivery of such Products to the carrier for shipment to the Customer.

### ***Customer Inspection***

The Customer shall carefully inspect all deliveries of Products as they are received by the Customer and report

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promptly in writing to LTX-Credence any claimed error, shortage, defect or non-conformity of such Products. Any failure by the Customer to so inspect and report on shall constitute a waiver by the Customer of any claim or right of the Customer against LTX-Credence arising with respect to any such error, shortage, defect or non-conformity which was reasonably discoverable by such an inspection.

Any and all claims by the Customer for damage, loss, or delays in transit will be made by the Customer against the carrier, and LTX-Credence should be informed; and LTX-Credence will have no liabilities with respect to any such damage, loss, or delay.

### **Customer Acceptance**

All Products sold by LTX-Credence hereunder will be deemed to be accepted by the Customer upon satisfactory completion of LTX-Credence's standard calibration and checker programs for such Products at the installation site.

### **Software License**

All software provided or otherwise delivered in connection with any Products sold, licensed, or leased by LTX-Credence, including all software installed on any Product delivered to Customer and all software delivered separately in machine readable format, regardless of medium, is provided subject to the terms and conditions of the LTX-Credence Software License Agreement in effect at the time the software is delivered to the Customer. The terms and conditions of LTX-Credence's Software License Agreement, which is available upon request from LTX-Credence or at [www.ltxc.com/swtc](http://www.ltxc.com/swtc), are incorporated here by reference as if set forth in full.

### **Payment Terms**

For shipments to destinations within the U.S., LTX-Credence's invoices to the Customer for Products will be dated with the date on which the invoiced Products are delivered to the carrier for shipment to the Customer. Payment is cash on delivery unless LTX-Credence approved credit has been established. If approved credit has been established, payment terms are 100% net thirty (30) days after the invoice date.

For international shipments, payment shall be made by irrevocable letter of credit (ILOC). For each order accepted by LTX-Credence, Customer shall provide an ILOC for the full value of Customer's order, payable in the U.S.A., in U.S. dollars, drawn on a U.S. bank acceptable to LTX-Credence. Such ILOC must be received by LTX-Credence

not less than thirty (30) days prior to scheduled shipment. ILOC payment terms shall be 90% upon shipment and 10% upon installation.

At any time prior to the date of shipment, LTX-Credence reserves the right to change any terms of credit extended to Customer in the event LTX-Credence believes, in good faith, that there has been an adverse change in credit worthiness of Customer. If Customer refuses to accept such change in terms, the order shall be canceled without liability to either party. In the event of bankruptcy or insolvency of Customer or in the event any proceeding is brought by or against Customer under any bankruptcy or insolvency laws or their equivalent, LTX-Credence may cancel any order then accepted by LTX-Credence but not yet shipped. Orders so canceled are subject to the cancellation charges as set forth herein.

### **Overdue Payments**

All overdue payments shall be subject to an additional interest and service charge calculated at the rate of 1.5% per month or fraction thereof, or the highest lawful rate, whichever is lower, assessed against the unpaid balance of the invoice from the due date until the date of payment.

### **Deductions**

The Customer shall not deduct from amounts due to LTX-Credence any amounts alleged to be owed by LTX-Credence to the Customer, including but not limited to any damages or losses which the Customer may allege to have sustained as a result of any alleged breach by LTX-Credence of any obligation of any kind to the Customer, whether or not arising in connection with any sale of Products by LTX-Credence to the Customer.

### **Partial Deliveries**

All of LTX-Credence's invoices to the Customer will be due and payable in accordance with the foregoing Terms and Conditions, even if LTX-Credence makes partial deliveries of the Products ordered, or deliveries in accordance with any schedule authorized by the Customer and agreed to by LTX-Credence.

### **Warranty Terms**

Each Product purchased will include a global warranty for the original Customer on the terms set forth below. A global warranty includes the warranty for the country of purchase. If the Product is moved to another country, the standard warranty will remain in effect, provided that LTX-

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Credence has a Product specific support presence in that country.

### **Product**

LTX-Credence's warranty terms on Products are as follows:

- Parts: twelve months
- Labor: 90 days

For Product installed by the Customer, the warranty period begins on delivery. For Product installed by LTX-Credence, the warranty period begins on the date installation is complete. If the Customer schedules or delays installation by LTX-Credence more than 30 days after delivery, the warranty period begins on the 31st day after delivery.

LTX-Credence warrants hardware Products against defects in materials and workmanship. LTX-Credence further warrants that hardware Products conform to the specifications contained in the Product description current at the time of quotation, for the period of time described above. LTX-Credence does not warrant that the operation of Products will be uninterrupted or error free.

Some newly manufactured LTX-Credence Products may contain and LTX-Credence Support may use remanufactured parts, which are equivalent to new in performance.

### **Hardware Upgrades**

LTX-Credence warrants hardware upgrades to previously purchased Systems for a period equal to the greater of the existing System warranty, or 90 days from the date of upgrade installation. The labor warranty is contingent upon the installation of the upgrade having been performed by LTX-Credence personnel.

### **Software**

LTX-Credence's proprietary Software is warranted for twelve months in accordance with the terms and conditions of the LTX-Credence Software License Agreement.

### **Test System Recalibration**

LTX-Credence will provide recalibration of any integral calibration instrument in the event that such instrument is found to be defective within the warranty period. Recalibration of integral calibration equipment required solely to maintain the Customer's traceability requirements, if performed by LTX-Credence, will be

charged for in accordance with the recalibration charges in LTX-Credence's then current Price List. The Customer will pay for all costs of shipping, customs duties, delivery, insurance, and the like, related to the shipment of a calibration instrument to and from the designated LTX-Credence recalibration facility. The Customer may, at its option, arrange for the recalibration of the Systems' calibration instruments at any qualified and suitably equipped calibration laboratory.

### **Claims**

If LTX-Credence receives notice of defects in materials and workmanship, or non-conformance to Specifications during the warranty period, LTX-Credence will, at its option, repair or replace the affected Product(s). Customer will pay all costs of shipping, custom duties, delivery, insurance and the like, related to the Customer's shipment of the affected product to and from the designated LTX-Credence location. Replaced parts are the property of LTX-Credence.

### **Exclusions**

The above warranties do not apply to defects resulting from improper or inadequate maintenance, installation, repair or calibration by Customer, Customer or third party supplied hardware or software, interfacing or supplies, unauthorized modification, improper use or operation outside of the Specifications for the Product, abuse, negligence, accident, loss or damage in transit, or improper site preparation, and such warranty does not extend to expendable items such as lamps, fuses or the like, or to mechanical parts which fail from normal usage.

The above warranties do not apply to application-specific or custom hardware Products. LTX-Credence's warranty terms for these types of Products are 90 days for parts only.

### **Warranty Termination**

The LTX-Credence Warranty is granted by LTX-Credence only to the original Customer for the time period identified above. The LTX-Credence Warranty may be terminated under certain circumstances; such circumstances include, but are not limited to:

- Time expiration: The expiration of the original Warranty time period.
- Ownership change: A change in the owner of the warranted Product.

### **EXCLUSION OF OTHER WARRANTIES**

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THIS WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY LTX-CREDENCE WITH RESPECT TO ANY PRODUCTS SOLD OR PROVIDED BY LTX-CREDENCE, AND LTX-CREDENCE GIVES AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS WARRANTY. NO REPRESENTATIVE OF LTX-CREDENCE IS AUTHORIZED TO GIVE OR MAKE ANY OTHER REPRESENTATION OR WARRANTY OR TO MODIFY THIS WARRANTY IN ANY WAY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO IMPLIED WARRANTY OF MERCHANTABILITY, NO IMPLIED WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE, AND NO IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE IS GIVEN OR MADE BY LTX-CREDENCE, AND LTX-CREDENCE SPECIFICALLY DISCLAIMS ALL SUCH WARRANTIES.

### **Infringement of Proprietary Rights**

In the event of any claim or proceeding against the Customer by any third person, in which it is claimed that any Product (or any part thereof) manufactured by LTX-Credence infringes upon any other person's United States patent, copyright, trademark, or service mark, or other proprietary rights (collectively, "proprietary rights"), LTX-Credence will settle or defend such claim or proceeding at LTX-Credence's expense, upon and subject to the following conditions and limitations:

- The foregoing undertaking of LTX-Credence is expressly conditioned on receipt by LTX-Credence of notice from the Customer, in writing and as soon as practicable, of the existence of any such claim or proceeding, the Customer providing LTX-Credence with the appropriate information and assistance as reasonably requested by LTX-Credence (and at LTX-Credence's expense), and the Customer's written authorization providing for LTX-Credence to assume complete control and direction of the settlement and/or defense of such claim or proceeding.
- LTX-Credence will pay all damages and costs assessed against the Customer in connection with any such claim or proceeding, provided, however, that in no event shall LTX-Credence be obligated to pay any amount in excess of that actually received by LTX-Credence from the Customer in payment for the allegedly infringing Products.
- In the event any Product manufactured by LTX-Credence (or any part thereof) becomes (or in the judgment of LTX-Credence may become) the subject of any such claim or proceeding, and as a result the use of such Product (or any part thereof) is enjoined

(or in the judgment of LTX-Credence may be enjoined), LTX-Credence will, at its option and expense, either:

- *Procure for the Customer the right to continue to use such Product (or part), or*
- *Replace or modify the same with non-infringing Products or part), or*
- *Remove such Product (or part) provided that removal of such part does not materially and adversely affect the substantial functioning of the Product) and refund the purchase price of such infringing Product (or part).*

By the sale to the Customer of Products manufactured by LTX-Credence, LTX-Credence does not convey to the Customer any license, by implication, estoppel or otherwise, under any patent or patent claims covering combinations of Products manufactured by LTX-Credence with any equipment, products, devices, or components not manufactured or provided by LTX-Credence. Further, LTX-Credence retains to itself all proprietary rights in and to all designs, engineering details and other data pertaining to the Products specified in the order and to all discoveries, inventions, copyrights, patents and trade secrets which may be found or developed as a result of the efforts and work done by LTX-Credence in connection with the order and to any and all Products developed by LTX-Credence, including the sole right to manufacture or copy any and all such Products. LTX-Credence may require Customer to execute a separate confidential disclosure agreement. In addition, LTX-Credence's undertaking with respect to infringement of others' proprietary rights does not cover any alleged infringement involving any products, equipment, devices, or components not manufactured by LTX-Credence or any combination of any Products manufactured by LTX-Credence with any other products, equipment, devices, or components. If the Customer provides LTX-Credence with any designs, specifications, or instructions, the Customer shall indemnify LTX-Credence and hold LTX-Credence harmless from and against any and all liabilities, expenses, costs, or other losses (including but not limited to damages, lost profits, costs and expenses, and attorneys' fees) arising out of or in connection with infringement of any proprietary rights of any third party which arise or result directly or indirectly, in whole or in part, from compliance by LTX-Credence with such designs, specifications, or instructions. LTX-Credence further reserves the right to cancel, without any liability to the Customer, any order for any Products the manufacture, sale, and/or use of which, in the judgment of LTX-Credence, would or might infringe upon any proprietary right of any third party.

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The foregoing states the entire liability of LTX-Credence for any claim by any third party that any Product (or part thereof) sold by LTX-Credence to the Customer infringes any proprietary rights of any third party.

### **Limitation of Liability**

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, LTX-CREDENCE SHALL HAVE NO LIABILITY, OBLIGATION, OR RESPONSIBILITY OF ANY KIND OR IN ANY WAY FOR ANY LOSSES, COSTS, EXPENSES, OR OTHER DAMAGES (INCLUDING BUT NOT LIMITED TO ANY DAMAGES RESULTING FROM LOSS OF PROFITS, USE, GOODWILL, OR DATA; DELAYS; INCONVENIENCE; OR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES) RESULTING FROM ANY REPRESENTATION OR WARRANTY OF ANY KIND MADE BY LTX-CREDENCE WITH RESPECT TO LTX-CREDENCE'S PRODUCTS OR THE PERFORMANCE THEREOF, OR ARISING IN ANY WAY OUT OF OR IN CONNECTION WITH THE PURCHASE BY OR USE OF LTX-CREDENCE'S PRODUCTS BY THE CUSTOMER, EVEN IF LTX-CREDENCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FURTHERMORE, IN NO EVENT WHATSOEVER SHALL LTX-CREDENCE'S LIABILITY UNDER THE WARRANTY PROVIDED ABOVE OR IN ANY OTHER WAY IN CONNECTION WITH LTX-CREDENCE'S PRODUCTS (OR THE CUSTOMER'S PURCHASE OR USE THEREOF) EXCEED THE AMOUNT WHICH HAS ACTUALLY BEEN RECEIVED BY LTX-CREDENCE FROM THE CUSTOMER AND IS DIRECTLY ATTRIBUTABLE TO THE SPECIFIC PRODUCTS WITH RESPECT TO WHICH ANY DAMAGES ARISE (INCLUDING, BUT NOT LIMITED TO ANY LIABILITY FOR INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS; FOR NEGLIGENCE; OR FOR ANY DAMAGES IN ANY ACTION BASED UPON CONTRACT OR TORT AND ARISING OUT OF OR IN CONNECTION WITH SUCH PRODUCTS, OR THE SALE OR USE THEREOF, OR ANY OTHER PRODUCT OR PROVIDED BY LTX-CREDENCE TO THE CUSTOMER HEREUNDER, OR IN CONNECTION WITH ANY OF THE FOREGOING, OR OTHERWISE).

THE LIABILITIES OF LTX-CREDENCE AND THE REMEDIES PROVIDED TO THE CUSTOMER HEREIN AND IN LTX-CREDENCE'S SOFTWARE LICENSE AGREEMENT, CONSTITUTE BOTH THE EXCLUSIVE

REMEDIES OF LTX-CREDENCE AND THE EXCLUSIVE REMEDIES OF THE CUSTOMER UNDER OR IN CONNECTION WITH LTX-CREDENCE'S PRODUCTS OR THE SALE OR USE THEREOF. EXCEPT AS SPECIFICALLY PROVIDED HEREIN OR IN LTX-CREDENCE'S SOFTWARE LICENSE AGREEMENT, LTX-CREDENCE WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY COSTS, EXPENSES, OR DAMAGES.

IN NO EVENT WILL LTX-CREDENCE BE RESPONSIBLE OR LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY IN CONNECTION WITH ANY PRODUCTS OR ANY SALE OR USE OF PRODUCTS.

### **Additional Terms**

#### ***Entire Agreement***

The terms and conditions set forth herein, including the Software License Agreement and any other agreements incorporated by reference, together with any additions thereto or revisions thereof agreed to in writing by LTX-Credence in an LTX-Credence quotation or other written instrument, constitute the entire agreement and understanding of LTX-Credence and the Customer with respect to sales of Products. Such terms and conditions will control irrespective of any inconsistent, different or additional terms and conditions, whether printed or otherwise, set forth in any communications from the Customer to LTX-Credence (to all of which LTX-Credence expressly objects) or which otherwise would be deemed established by any course of dealing or course of performance or usage, unless otherwise specifically provided herein or specifically agreed to in writing by LTX-Credence. If there is a conflict among the terms contained herein or in an LTX-Credence quotation, the terms contained in the LTX-Credence quotation shall govern.

The invalidity or unenforceability, in whole or in part, of any provision, term, or condition hereof shall not affect in any way the validity and enforceability of the remainder of such provision, term, or condition, or of any other provision, term, or condition.

#### ***Modifications***

LTX-Credence may treat any attempted modification, termination, or repudiation to which it does not assent in writing as a breach of the entire agreement hereunder and recover from the Customer all of LTX-Credence's damages (including, but not limited to, special, indirect,

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consequential, and incidental damages) arising in connection therewith.

#### ***Breach of Contract***

Upon any breach by the Customer or failure by the Customer to comply with any of these Terms and Conditions of Sale, or if the Customer in the judgment of LTX-Credence becomes unable to conduct its normal business operations (including the inability to meet its obligations as they mature) or becomes the subject of any proceedings under any state or federal bankruptcy law or other law for the benefit of creditors or relief of debtors or makes any assignment for the benefit of creditors, LTX-Credence will have the right immediately to cancel or terminate any and all agreements with or obligations to the Customer relating to sales of LTX-Credence's Products, in whole or in such part as LTX-Credence in its sole judgment shall deem expedient, and recover from the Customer all of LTX-Credence's damages (including but not limited to special, indirect, consequential, and incidental damages) arising in connection therewith.

#### ***Attorney Fees***

In any action arising out of or relating to this Agreement, the prevailing party will be entitled to recover all of its costs and expenses, including its reasonable attorney fees.

#### ***Waivers***

LTX-Credence will not be deemed to have waived any provision hereof, or any breach by the Customer of any provision hereof, unless specifically set forth in writing and executed by an authorized officer of LTX-Credence. No waiver by LTX-Credence of any provision hereof or any breach by the Customer hereunder shall constitute a waiver of such provision on any other occasion or a waiver of any other breach by the Customer.

#### ***Assignment***

Neither the Customer nor LTX-Credence may assign any of its respective rights or obligations in connection with any order by the Customer of LTX-Credence's Products, except that LTX-Credence may assign such rights or obligations in the event of a merger or sale of LTX-Credence. Any such prohibited assignment or purported assignment shall be void ab initio.

#### ***Governing Law***

These Terms and Conditions of Sale and the transactions contemplated hereby shall be governed by, and

construed, interpreted, and enforced in accordance with, the internal laws of the Commonwealth of Massachusetts (excluding its conflicts of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods). The parties agree that the jurisdiction and venue of any action with respect to the transactions contemplated herein shall be the state or federal courts in Boston, Massachusetts, and each of the parties hereby submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.

#### ***Export Regulations***

Regardless of any disclosure made by Customer to LTX-Credence of an ultimate destination of LTX-Credence's Products, Customer will not export either directly or indirectly any Product, or any system incorporating said Product, without first obtaining all required licenses and permits from the United States Department of Commerce or State and/or any other relevant agencies or departments of either the United States or interested foreign Government.

#### ***Force Majeure***

LTX-Credence shall not be liable for nonperformance or delays, not otherwise excused, which occur due to causes beyond its control. These causes shall include, but shall not be limited to, acts of God, wars, riots, strikes, fires, storms, flood, earthquake, shortages of labor or material, labor disputes, vendor failures, transportation embargoes, acts of any government or agency thereof, judicial action or any or all other causes beyond its reasonable control. In the event of any such excused delay or failure of performance, the date of delivery shall, at the request of LTX-Credence, be deferred for a period equal to the time lost by reasoned delay. LTX-Credence shall notify Customer in writing of any such event or circumstances within a reasonable time after it learns of same. In no event will LTX-Credence be liable for any special, consequential, or incidental damages.

#### ***For More Information***

For more information on the topics discussed in this document, please contact:

**Xcerra Corporation**  
825 University Ave. | Norwood, MA 02062  
Tel: +1-781-461-1000  
[www.ltx-credence.com](http://www.ltx-credence.com)

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