



VENDOR TERMS AND CONDITIONS

Xcerra Corporation

1 ACCEPTANCE -Any of the following acts by the seller identified in an order (the “Seller”) issued by Xcerra Corporation, on behalf of itself and all of its business units and direct and indirect subsidiaries and affiliated companies, including, without limitation, LTX-Credence, atg L&M, Everett Charles Technologies, and the Multitest companies (collectively, the “Buyer”), shall constitute acceptance by the Seller of the order and all of its terms and conditions: delivery of any of the items ordered; informing Buyer in any manner of the commencement of performance; returning Seller’s own form of acknowledgment; or notice to Buyer of the delivery schedule. Any term of condition stated by the Seller in any prior proposal or in acknowledging or otherwise accepting the order shall not be binding on the Buyer unless specifically accepted in writing.

2 PRICE AND DELIVERY -Seller shall furnish the items called for by the order in accordance with the prices and delivery dates stated on the face of the order. If prices and/or delivery dates are not stated, Seller shall offer its lowest prices or best delivery dates, both of which shall be subject to written acceptance by Buyer. All prices include all applicable taxes, except sales tax which is separately shown where applicable. Seller warrants that the prices charged for the items covered by the order will be as low as the lowest prices charged by the Seller to any other customers purchasing similar items in the same or smaller quantities and under like circumstances. Buyer may return or store at Seller’s expense any items delivered in advance of the delivery date specified for such items unless such a reasonable time for early shipment has been otherwise agreed upon in writing between Buyer and Seller.

3 PACKING AND SHIPPING -No charge shall be made by Seller for packaging, transportation or storage if not specified by Seller and agreed upon in writing by Buyer. All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain lowest transportation rates. Seller shall mark on containers handling and loading instructions, shipping information, purchase order number, items and account number, shipment date and names and addresses of Seller and Buyer. Any itemized packing list must accompany each shipment.

4 RISK OF LOSS -Seller shall bear all risk of loss on items covered by the order until final acceptance at destination specified on the face of the order, except loss occasioned by negligence of Buyer or its customer. The “F.O.B.” in the order refers to transportation charges only and it does not vary the foregoing provisions of this Article.

5 INVOICING -After each shipment made under the order, Seller shall send a separate invoice, including item numbers, in duplicate, accompanied by a bill of lading or express receipt. Payment of this invoice shall not constitute acceptance of items ordered and shall be subject to appropriate adjustment for failure of Seller to meet the requirements of the order. Buyer may set off any amount owed by Seller or any of its affiliated companies to Buyer against any amount owed by Buyer under the order.

6 INSPECTION -All items included within the order may be inspected and tested by Buyer or its designee, at all reasonable times and places. Seller shall provide, without additional charge, all reasonable facilities for and assistance with such inspections and tests. All inspection records relating to items covered by the order shall be available to Buyer during the performance of the order and for such longer periods as specified by Buyer in its acceptance of the inspection procedure. If any items covered by the order are defective or otherwise not in conformity with the requirements of the order, Buyer may, by written notice to Seller, (i) rescind the order as to such items, (ii) accept such items at an equitable reduction in price, agreed upon between parties, or (iii) reject such items and require the delivery of replacements. Deliveries of order replacements shall include a written notice specifying that such items are replacements. If Seller fails to deliver required replacements promptly, Buyer may (i) replace or correct such items and charge Seller the cost incurred by Buyer thereby, or (ii) terminate the order for default as provided in Article 20(b).



No inspection (including source inspection), tests approval, including design approval, or acceptance shall relieve Seller from responsibility for defects or other failures to meet the requirements of the order. Rights granted to Buyer in this Article 6 are in addition to any other rights or remedies provided elsewhere in the order or in law.

Final inspection shall be at destination unless otherwise specified in the order. Except as to latent defects, fraud, such gross mistakes as amount to fraud, and Seller's warranty obligations, such final inspection shall be conclusive and the items shall be deemed accepted unless Buyer notifies Seller in writing within thirty (30) days after completion of the final inspection.

7. **WARRANTIES** -In addition to any other express or implied warranties, Seller warrants that items furnished pursuant to the order will be (i) free from defects in workmanship and material, (ii) free from defects in design except to the extent that such items comply with detailed designs provided by Buyer, (iii) suitable for the purposes, if any, which are stated on the face of the order or otherwise known to Seller, and (iv) in conformity with all other requirements of the order. In addition to any other rights Buyer may have, if items delivered pursuant to the order are found not to be as warranted, Buyer may return such items to Seller, at Seller's expense, for correction, replacement or credit, as Buyer may direct. Any items corrected or furnished in replacement shall also be subject to all the provisions of these Terms and Conditions to the same extent as items initially furnished.

8. **MATERIALS AND TOOLS** -If Buyer furnishes Seller material or equipment (such as special dies, molds, jigs, tools, test equipment, etc.), or pays for the design or manufacture of such material or equipment, title thereto shall remain or vest in Buyer, and Seller shall identify by marking with Buyer's company name, maintain and preserve such material and equipment and shall dispose of it (including scrap) in accordance with Buyer's direction. Seller shall not include any insurance cost in the prices charged under the order. Buyer has right to withdraw any material, tools or equipment at any time.

9. **PROPRIETARY INFORMATION** -All information obtained by Seller from Buyer in connection with the order and which is identified as proprietary or is of a nature that Seller reasonably should recognize the information as confidential or proprietary, is received in confidence and shall remain the property of Buyer, and shall be used and disclosed by Seller only to the extent necessary for the performance of the order. Seller shall take all reasonable steps necessary to preclude the dissemination, distribution of any confidential or proprietary information.

10. **SUBCONTRACTS** -Seller shall not subcontract for complete or substantially complete parts of work called for by the order without Buyer's prior written approval.

11. **COMPLIANCE WITH LAWS** -In performance of the order, Seller shall comply with all Federal, State and local laws, rules and regulations for violations of which Buyer may be liable, including particularly all applicable requirements of the Fair Labor Standards Act.

12. **PATENTS AND COPYRIGHTS** -Seller will defend at its own expense, any suit or claim that may be instituted against Buyer or any customer of Buyer for alleged infringement of patents, copyrights, trademarks, and all other intellectual property or similar rights relating to the maintenance, sale or use of items furnished pursuant to the order, except for any such infringement resulting from detailed designs provided by Buyer, and Seller shall indemnify Buyer and its customers for all costs and damages arising out of such alleged infringement. Buyer, too, has the right to defend against any suit or claim. Buyer shall have the right at no additional charge to use and/or reproduce the Seller's applicable literature, such as operating and maintenance manuals, technical publications, prints, drawings, training manuals and other similar supporting documentation and sales literature. Seller agrees to advise Buyer of any updated information relative to foregoing literature and documentation with timely notifications in writing.



13. **LIABILITY FOR INJURY** -Seller shall indemnify Buyer against loss and liability for all personal injury and property damage caused by items furnished or services performed by Seller pursuant to the order, whether performed on the premises of Seller or Buyer, or elsewhere. Seller shall carry and maintain insurance coverages satisfactory to Buyer to cover the above, and upon Buyer's request, shall furnish to Buyer appropriate evidence of such insurance.
14. **ASSIGNMENT** -Seller shall not assign the order or any rights under the order except as monies, dues or to become due hereunder without the prior written consent of Buyer, and no purported assignment by Seller shall be binding on Buyer without such consent.
15. **NOTICE OF LABOR DISPUTES** -Whenever an actual or potential labor dispute is delaying or threatens to delay the timely performance of the order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such dispute.
16. **CESSATION OF PRODUCTION** -Seller shall give Buyer at least 180 days prior written notice of the permanent discontinuance of production of items covered by the order during which time Seller shall accept orders from Buyer for a reasonable quantity of such items.
17. **PUBLICITY** -Seller shall not make or authorize any news release, advertisement, or other disclosure which shall deny or confirm the existence of the order or which shall make use of Buyer's name without the prior written consent of Buyer, except as may be required to perform the order.
18. **SUPPLY CHAIN MANAGEMENT** -Seller warrants, to the best of its knowledge, that items ordered by the Buyer shall not include tin, tantalum, tungsten or gold ("Conflict Minerals") that is sourced in conflict areas in the Democratic Republic of Congo or an adjoining country. Seller agrees to abide by and comply with Buyer's Conflict Minerals Policy (located at www.xcerra.com/corporate-governance.html), and to communicate to its suppliers its own commitment to responsible sourcing. Seller agrees to cooperate with its suppliers to ensure traceability of Conflict Minerals and maintain all related documentation, to be provided to Buyer upon request.
19. **CORPORATE RESPONSIBILITY** -Seller asserts that it uses commercially reasonable efforts to comply with the Electronic Industry Citizenship Coalition ("EICC") Code of Conduct. Seller endeavors to comply with all standards of ethical business conduct in accordance with all applicable laws, rules and regulations. Seller maintains a commitment to practices of corporate responsibility that reflects the spirit of the EICC Code of Conduct.
20. **CHANGES** -Buyer may at any time, by written change order, suspend performance of the order in whole or in part, make changes in drawings, designs, specifications, method of shipment or packing, alter the time or place of delivery, or require additional or diminished work. If any such change causes an increase or decrease in the cost of, or the time required for, performance of the order, an equitable adjustment shall be reached by agreement of both parties in the contract price or delivery dates or both, and the order shall be modified in writing accordingly. Any claim for adjustment under this Article shall conclusively be deemed to be waived unless asserted in writing (including the amount of the claim) and delivered to Buyer within thirty (30) days from the date of receipt by Seller of the change order. If property is made obsolete or excess as a result of a change by Buyer, Buyer shall pay for and prescribe the manner of disposition of such property. Buyer's engineering and technical personnel may from time to time render assistance to Seller concerning the items or services to be furnished pursuant to the order, but such personnel are not authorized to change the items ordered or the provisions of the order. No change order will be binding on Buyer or Seller unless issued by an authorized representative of Buyer's purchasing office.



21. **TERMINATION** -(a) **WITHOUT CAUSE**. Buyer may terminate, for its convenience, all or any part of the order at any time by written notice to Seller. If the order is terminated without cause, Buyer will pay reasonable cancellation charges in accordance with industry practice. In no event, however, shall cancellation charges be in excess of the total contract price. (b) **WITH CAUSE**. If (i) Seller fails to make any delivery or perform any services in accordance with specified delivery dates or otherwise fails to comply with the order, (ii) Seller fails to make progress to such an extent that performance of the order is endangered, (iii) any proceeding is filed by or against Seller in bankruptcy or insolvency, or for appointment for the benefit of creditors, or (iv) any other breach of the order, Buyer may (in addition to any other right or remedy provided by the order or by law) terminate all or any part of the order by written notice to Seller without any liability and may purchase substitute items elsewhere and Seller shall be liable to Buyer for any excess cost incurred by Buyer thereby. If this contract is terminated for any reason, Buyer, in addition to any other rights provided by law, may require Seller to transfer title and deliver to Buyer (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights as Seller has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated. Buyer will pay for reasonable value of items transferred. If, after notice of termination of this contract "With Cause," it is determined that the failure to perform is due to causes beyond the control and without the fault or negligence of Seller, such notice of default shall be deemed to have been issued pursuant to the clause of this contract entitled "Termination Without Cause," and the rights and obligations of the parties hereto shall in such event be governed by such clause.

22. **WAIVER** -The failure of Buyer to insist upon the performance of any provision of the order, or to exercise any right or privilege granted to Buyer under the order shall not be construed as waiving any such provision, and the same shall continue in force.

23. **ATTORNEY FEES** –In any controversy, claim or action arising out of or relating to the order or these Terms and Conditions, the prevailing party will be entitled to recover all of its costs and expenses, including its reasonable attorney fees.

24. **GRATUITIES** -It shall be deemed a default subject to termination by Buyer if it is found that Seller made, directly or indirectly, any bribes, kickbacks or other payments, regardless of form, whether in money, property, or services, to any corporate officer or employee of any third party acting on behalf of Buyer, to obtain favorable treatment in securing business or to otherwise obtain special concession, or to pay for favorable treatment for business secured or for special concessions already obtained.

25. **SALES TAXES** -Unless otherwise noted, any article covered by the order will become a component part of the product manufactured by Buyer and is bought for resale, and no retail sales tax is applicable.

26. Buyer and Seller agree to comply with the following: Fair Labor Standards Act, Occupational Safety and Health Act, and Equal Employment Opportunity.

For More Information

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

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