



# Xirgo Technologies, Inc. ("Xirgo")

## Standard Terms and Conditions

- Offer and Acceptance:** Xirgo offers to sell and deliver products ("Products") in accordance with the terms and conditions set forth in our quotation and those contained herein (collectively the "Agreement"). Acceptance of this offer, as indicated by Buyer issuing a purchase order for Product ("Order") or otherwise purchasing Product, is expressly limited to such terms. Any terms and conditions proposed by the Buyer, including those contained in Buyer's Order, shall not apply to purchases of Product from Xirgo, unless Xirgo expressly agrees to such terms in writing.
- Lead Time, Title and Delivery:** Product lead times are stated in the price quotation. All shipments shall be delivered Ex-Works (Incoterms 2000) to Buyer's designated carrier. Title and risk of loss or damage shall pass to Buyer upon Xirgo's delivery to Buyer's designated carrier. Xirgo may make partial shipments against Buyer's Orders. Xirgo shall not be liable for any damages, losses or expenses incurred by Buyer for due to delays in shipment of units or failure to meet the estimated shipment dates and Buyer shall accept such shipments.
- Payment Terms:** Payment terms are stated in the price quotation. The preferred method of payment is via wire transfer, per Xirgo's wire transfer instructions. BUYER AGREES THAT TIME IS OF THE ESSENCE WITH RESPECT TO PAYMENT AND BUYER AGREES TO MAKE FULL AND TIMELY PAYMENT. If any payment is not made when due, Buyer agrees to pay interest on such outstanding amount(s) at the lesser rate of one percent (1%) per month (12% per annum) or the maximum amount permitted by law. Buyer is liable for all reasonable costs associated with the collection of delinquent payments including without limitation, reasonable collection, legal and court costs.
- Taxes:** Prices are exclusive of all taxes or duties. Unless Buyer provides Xirgo with a duly executed sales tax exemption certification prior to shipment of Product, Xirgo will add sales taxes to the sales price where required by applicable law, and Buyer will pay such taxes.
- Order Cancellation:** In the event that Buyer cancels all or parts of an Order, or fails to meet all its obligations causing the cancellation of an Order or portion thereof, Buyer agrees to pay a cancellation fee of 50% of the Product price, as stipulated in Buyer's Order. Recognizing that the damages to Xirgo arising from any cancellation or rescheduling of any Order will be difficult to estimate, the parties agree that the afore mentioned cancellation fee covers Xirgo's expenses and is not intended as a penalty.
- Subject to Section 9 below, for a period of twelve (12 months) from date of shipment, Xirgo warrants that Xirgo Products shall be free from material defects in material or workmanship and shall conform to Xirgo's published specifications for such Product. Xirgo shall not be liable for any defects that are caused by neglect or mistreatment, including improper installation or testing, or for any Products that have been altered, misused, abused, damaged, repaired, or modified in any way by an entity other than Xirgo. Xirgo shall not be liable for any defects that result from Buyer's design, specifications or instructions for such Products, or combination of such Products with accessories or devices not approved by Xirgo as being compatible, or acts of God.**
- If any Products fail to conform to the warranty set forth above, Xirgo's sole liability shall be at its discretion, to repair or replace such Products, or credit Buyer's account for such Products. Xirgo's liability under this warranty shall be limited to Products that are returned during the warranty period to the address designated by Xirgo, using Xirgo's then current Returned Materials Authorization ("RMA") process, and that are determined by Xirgo not to conform to such warranty. Repaired or replaced Products shall be warranted for the remainder of the original warranty period. Buyer shall pay the shipping costs for the return of Products to Xirgo and Xirgo shall pay the costs of shipping repaired or replacement Products back to Buyer.**
- EXCEPT FOR THE LIMITED EXPRESS WARRANTIES SET IN SECTIONS 6 AND 7 ABOVE; XIRGO MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY. XIRGO SPECIFICALLY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT, EXCEPT WHERE PROHIBITED BY LAW AND, WHERE PROHIBITED, ANY SUCH WARRANTY SHALL BE LIMITED TO THE MINIMUM WARRANTY AND PERIOD REQUIRED BY LAW.**
- Buyer agrees to communicate to its customers that the Products are not intended for use in safety-critical or military applications (such as life support) where a failure of the Product would reasonably be expected to cause severe personal injury or death. Buyer shall fully indemnify Xirgo and its representatives against any damages arising out of the unauthorized use of Products, including but not limited to any use in such safety-critical or military applications.**

Buyer represents that it has all necessary expertise in the safety and regulatory ramifications of its applications, and Buyer acknowledges and agrees that it is solely responsible for compliance with all legal, regulatory and safety-related requirements of applicable federal, state, local or foreign governments and any agency or public authority thereof, concerning its products and any use of Products in Buyer's applications or resale of units containing Products, notwithstanding any applications-related information or support that may be provided by Xirgo. BUYER AGREES THAT, TO THE EXTENT BUYER WILL USE OR RESELL THE PRODUCTS TO ASSIST IN COLLECTION OF AMOUNTS OWED TO IT OR ITS CUSTOMERS, BUYER OR ITS CUSTOMERS, AS THE CASE MAY BE, WILL PROVIDE ITS OR THEIR CUSTOMERS WITH A WRITTEN DISCLOSURE EXPLAINING THE PURPOSE AND FUNCTIONALITY OF THE PRODUCTS AND, AS THE CASE MAY BE, OBTAIN ITS OR THEIR CUSTOMERS' CONSENT TO THE INSTALLATION OF THE PRODUCTS AS A CONDITION, AS THE CASE MAY BE, TO BUYER'S OR ITS CUSTOMERS' FINANCING ANY CUSTOMER'S PURCHASE OF A VEHICLE FROM BUYER OR ITS CUSTOMER. Buyer understands that certain GPS and/or starter disablement technology may not now, or in the future, be permitted by law in certain states. Buyer bears exclusive responsibility for verifying that the Products may be used in any particular installation or location. Xirgo shall not be liable for any claims or damages that may arise because the GPS and/or starter disablement technologies are not permitted in a particular jurisdiction and Buyer indemnifies Xirgo against such claims and damages.
- Buyer acknowledges that all intellectual property related to Products is the property of Xirgo. Buyer shall not reverse engineer, have Products reverse engineered, and shall not aid a third party in reverse engineering Products. Unless otherwise agreed in writing with Xirgo, Buyer has no rights to use any of Xirgo's trade names, trade marks, service marks, logos, domain names, or other distinctive product features. Buyer agrees that it shall not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within Products.**
- Limitations of Technology.** Buyer acknowledges the following inherent technical limitations relating to Product use. Complete service area coverage at all times is improbable. The existence of unfavorable conditions, such as weather and wave interference from distant stations can interrupt Product functionality. Moreover, if a Product is moved out of an available service area, communication with that Product will be unavailable until it returns to the available service area. Other environmental issues including, but not limited to service interruptions, poor coverage areas, network congestion, roaming and other wireless access issues may affect Product performance. Global Positioning System ("GPS") is a satellite based positioning technology providing expansive coverage throughout the world. However, the GPS antenna in a Product must have a radio frequency link to the GPS satellites. If such radio frequency link is impaired, the Product may be unable to correctly recognize its location. Products have many complex elements and are not guaranteed against eavesdroppers, hackers, service attacks, viruses or interception. Buyer agrees to inform all users of Products, that Xirgo shall not be liable for any lack of privacy or security resulting from use of the Products. Products are based on cellular technology which may become obsolete in the future as a result of changes in wireless technology or actions by telecom regulators with respect to cellular technology in mapping applications. In such event, Xirgo shall have no obligation to issue a refund or furnish replacement Product. Further, Xirgo shall incur no liability arising from a lack of network capacity of the Product which results from concentrations of usage in certain locations.
- Non-waiver of Default:** In the event of any default by Buyer, Xirgo may decline to make further shipments. If Xirgo elects to continue to make shipments, Xirgo's action shall not constitute a waiver of any such default or affect Xirgo's legal remedies for any such default.
- Buyer agrees that unless prior authorization is obtained from the U.S. Department of Commerce, neither Buyer nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), received from Xirgo, or export, re-export, or release, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or product is prohibited by the EAR. Buyer shall furnish the assurances provided herein to Xirgo in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.**
- Buyer further agrees to obtain any necessary export license or other documentation prior to the exportation or re-exportation of any Product, technical data, software or software source code acquired from Xirgo under this Agreement or any direct product of such technical data, software or software source code.**
- General Limitations. XIRGO SHALL NOT BE LIABLE TO BUYER OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE CAUSED BY THE USE OF THE PRODUCTS, REGARDLESS OF THE CAUSE. IN NO EVENT SHALL XIRGO BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY SPECIAL, COLLATERAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE USE OF PRODUCTS PROVIDED HEREUNDER, REGARDLESS OF WHETHER XIRGO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SUCH DAMAGES MAY INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, COSTS TO PROCURE SUBSTITUTE PRODUCTS OR SERVICES, RETESTING, OUTSIDE COMPUTER TIME, LABOR COSTS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF USE, LOSS OF DATA, OR BUSINESS INTERRUPTION. BUYER AGREES TO INDEMNIFY AND HOLD XIRGO HARMLESS FROM AND AGAINST ANY AND ALL LOSSES OR DAMAGES CAUSED BY USE OF PRODUCTS BY BUYER OR BUYER'S CUSTOMERS. NO CLAIM, SUIT OR ACTION SHALL BE BROUGHT AGAINST XIRGO MORE THAN ONE YEAR AFTER THE RELATED CAUSE OF ACTION HAS OCCURRED. TO THE EXTENT THAT ANY OF THE ABOVE LIMITATIONS ARE PRECLUDED IN A GIVEN STATE, SUCH PRECLUSION SHALL NOT AFFECT ANY OTHER LIMITATIONS NOT SO PRECLUDED.**
- Specific Limitations. IN NO EVENT SHALL XIRGO'S AGGREGATE LIABILITY FROM ANY WARRANTY, INDEMNITY, OR OTHER OBLIGATION ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR ANY USE OF ANY XIRGO PRODUCT PROVIDED HEREUNDER, EXCEED THE LESSER OF THE TOTAL AMOUNT PAID TO XIRGO FOR THE PARTICULAR PRODUCTS SOLD UNDER THIS AGREEMENT WITH RESPECT TO WHICH THE LOSSES OR DAMAGES ARE CLAIMED, AND ONE HUNDRED THOUSAND DOLLARS. THE EXISTENCE OF MORE THAN ONE CLAIM AGAINST THE PARTICULAR PRODUCTS SOLD TO BUYER UNDER THIS AGREEMENT SHALL NOT ENLARGE OR EXTEND THIS LIMIT. BUYER UNDERSTANDS AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.**
- Contingencies:** Xirgo shall not be in breach of this Agreement and any non-performance or delays in performance shall be forgiven when such non-performance or delays in performance are due to a force-majeure event or other circumstances beyond Xirgo's reasonable control, including but not limited to, shortages of labor, energy, fuel, machinery or materials, technical or yield failures, war, civil unrest, any government act, law or regulation, including any judicial order or decree, any communication or power failure, labor dispute, natural disaster, fire, flood, earthquake, explosion, terrorist act or Act of God. If Xirgo is unable to wholly or partially provide Products because of any cause beyond its control, Xirgo may terminate this Agreement without any liability to Buyer or any third party, other than the refund of any amounts paid for the undelivered Products.
- Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to conflict-of-laws principles. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Buyer agrees that exclusive jurisdiction for any dispute arising out of or relating to this Agreement lies within courts located in the State of California and consents to venue in Ventura County, California. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and Xirgo may seek injunctive relief in any United States or foreign court.
- Entire Agreement:** This Agreement and the price quotation constitute the entire agreement between the parties relating to the sale of the Products and supersedes all previous communications, representations, or agreements, either oral or written, with respect to the subject matter hereof.