

## TERMS & CONDITIONS OF SALE

- 1. FORMATION OF CONTRACT.** Our acceptance is expressly made subject to the terms and conditions stated herein. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except as agreed to in writing by Voxel, LLC or an affiliated company of Voxel, LLC (hereinafter "VOXTEL"). Unless otherwise agreed by VOXTEL and PURCHASER in a separate written agreement, all orders received from the PURCHASER by VOXTEL shall be governed only by the terms and conditions contained herein, and VOXTEL hereby objects to any additional or different terms and conditions and notifies PURCHASER that they are rejected. The delivery of products by VOXTEL is conditioned upon PURCHASER's agreement to these terms and conditions of sale. PURCHASER accepts these terms by accepting delivery of the products, whether or not a copy of these terms is attached to or enclosed with such delivery. All shipments are "EX WORKS" POINT OF SHIPMENT. For the purposes of these terms and conditions of sale, affiliated company means a parent company (if any) that owns, directly or indirectly, a majority of a Party to this Agreement (a "Parent") or any other company that is majority-owned, directly or indirectly, by a Party or its Parent.
- 2. WARRANTY.** VOXTEL warrants for a period of one (1) year from the date of shipment to PURCHASER that all such delivered products are free from material defects in workmanship and material and shall substantially conform to VOXTEL's product specifications therefor. A product shall be deemed to have defects only if the defect is verified by VOXTEL. If any product does not conform to the preceding product warranty, PURCHASER shall inform VOXTEL within the one (1) year warranty period and return such non-conforming products for correction or replacement (at VOXTEL's sole discretion). VOXTEL's liability for such rejected products is limited solely to the cost of transportation expenses plus the responsibility of either repairing or replacing such non-conforming products or, if repair or replacement is not possible, refunding the purchase price, at VOXTEL's sole option, for such non-conforming products. This warranty does not extend to any of our products which fail to operate by reason of improper installation, application, or inspection, or have been subject to misuse, neglect, or accident, or have been repaired or substantially altered by a third party without VOXTEL's authorization. THE WARRANTIES SET FORTH IN THIS SECTION 2 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, AND VOXTEL EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ANY WARRANTY OF NONINFRINGEMENT, AND ALL OTHER WARRANTIES, WHICH MIGHT OTHERWISE ARISE FROM COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE. The remedies provided in this Section 2 are PURCHASER's sole and exclusive remedies for any failure of VOXTEL to comply with its warranty obligations.
- 3. PATENT INFRINGEMENT.** If, after the exhaustion of any appeals, VOXTEL products are finally determined by a court of competent jurisdiction to infringe any third party's patent, VOXTEL shall at its own expense use commercially reasonable efforts to, at its discretion, procure for PURCHASER the right to continue using the products, replace such products with non-infringing VOXTEL products or modify such products so they become non-infringing products. If, in VOXTEL's sole opinion, none of the foregoing alternatives are commercially viable or reasonably available, then PURCHASER shall have no other remedy or recourse as to VOXTEL arising from the court determination and VOXTEL may discontinue the sale of such products. Where VOXTEL's compliance with PURCHASER's designated designs, material usage, specifications, or information furnished by PURCHASER, results in an infringement, PURCHASER shall defend, indemnify and hold VOXTEL harmless against any claim of infringement. Notwithstanding the foregoing, VOXTEL has the right (but not the obligation) to assume control of the defense of any such infringement claim upon written notice to PURCHASER.
- 4. CHANGES.** Any changes in PURCHASER's drawing or specifications required by the PURCHASER may be made only after an equitable adjustment to the price of products, mutually negotiated by both parties.
- 5. TERMINATION/RESCHEDULING.** PURCHASER may terminate this contract for convenience by providing written notice to VOXTEL not later than forty-five (45) calendar days prior to VOXTEL's most recent acknowledged estimated ship date, provided, however, that PURCHASER's liability for such termination shall include the cost of completed items, work in progress, and raw materials purchased for PURCHASER. PURCHASER shall not reschedule order line items due for shipment in less than forty-five (45) calendar days. VOXTEL has the right to invoke a

handling/administrative charge of fifteen percent (15%) of the shipment value for any breach of the rescheduling provision herein. Either party may terminate this contract upon written notice to the other party if the other party: a) fails to cure any breach within thirty (30) calendar days of its receipt of a written notice of breach; b) becomes insolvent; or c) files a petition in bankruptcy, and such proceeding has not been dissolved within sixty (60) calendar days. Any terms contained herein which by their nature are required or intended to be observed or performed after termination of this contract shall survive termination.

6. **PRECIOUS METALS.** Should the price of precious metals or rare earth materials increase from the cost in effect at the time of establishment of product pricing, VOXTEL reserves the right to invoke price adjustments to compensate for such increases.

7. **FORCE MAJEURE.** VOXTEL shall not be responsible for any delay or failure to perform hereunder caused by fires, strikes, embargoes, government requirements, civil or military unrest, lack of precious metals, acts of God or by the public enemy, acts or omissions of carriers or other causes beyond VOXTEL's control.

8. **LIMITATION OF LIABILITY.** VOXTEL shall not be liable to PURCHASER, whether in contract, in tort (including negligence), under any warranty or otherwise for any special, punitive, indirect, incidental or consequential loss or damage or loss of profits or revenues resulting from, arising out of or in connection with this sale or from the performance or breach of any duties in connection therewith, including but not limited to, late delivery, and this Limitation of Liability shall survive any failure of the essential purpose of any Warranty or other remedy provided herein. NOTWITHSTANDING anything to the contrary herein, under no circumstances shall VOXTEL's cumulative liability to purchaser exceed the AGGREGATE amount paid by purchaser to VOXTEL for the SPECIFIC purchase order RELEASE under which the claim arises or to which it relates or the AMOUNT paid by purchaser to VOXTEL for the specific product to which the claim arises or to which it relates for the immediately preceding six months before such claim arose, which ever is less.

9. **EXPORT.** PURCHASER shall adhere to all applicable laws and regulations of import and export administrations. Furthermore, PURCHASER represents and warrants that no products, hardware, or technical data, which may be subject to the International Traffic in Arms Regulations or the Export Administration Act, furnished to it by VOXTEL shall be disclosed to any foreign national, firm or country, including foreign nationals employed by or associated with PURCHASER, nor shall any such hardware or technical data be exported from the United States, without first complying with all requirements of the International Traffic in Arms Regulations and the Export Administration Regulations, including the requirements for obtaining any export license, if applicable. PURCHASER shall first obtain the written consent of VOXTEL prior to submitting any request for authority to export any such hardware or technical data.

10. **INDEMNIFICATION.** PURCHASER agrees to defend, indemnify and hold harmless VOXTEL and its affiliates from and against any and all damages, losses, liability costs and expenses, including reasonable attorneys fees, incurred by VOXTEL as a result of any claim, including third party claims, arising out of, related to or based upon PURCHASER's possession, use, sale, licensing or distribution of the products.

11. **GENERAL.** (a) If any of the provisions of this contract are invalid under any applicable statute or law, such provisions are, to that extent, deemed omitted, but this contract and the remainder of its provisions shall otherwise remain in effect. (b) No provision of this contract shall be deemed waived, amended, or modified by either party, unless such waiver, amendment or modification is in writing and signed by the parties. (c) All matters regarding this contract shall be interpreted in accordance with the laws of the State of Oregon without regard to its conflict of laws principles and the United Nations Convention on Contracts for the International Sale of Goods, which shall not apply to this contract, and any controversy that cannot be settled amicably by the parties shall be settled by arbitration, to take place in Portland, Oregon, subject to the liability limitations set forth above, in accordance with the prevailing rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. (d) PURCHASER has the sole responsibility to assure that VOXTEL's products are not used in any devices or systems, in which a failure of VOXTEL's product can reasonably be expected to cause bodily harm.

