XNRGY Terms and Conditions of Purchase

These XNRGY Terms and Conditions of Purchase ("**Terms**") and any accompanying XNRGY ordering document ("**Purchase Order**"), or the signed acceptance by XNRGY of an ordering document referencing a Purchase Order and incorporating these Terms form the entire agreement ("**Agreement**") between the XNRGY entity having placed an order ("**XNRGY**") and the supplier listed on the relevant Purchase Order ("**Supplier**"), with respect to the purchase of any products and/or services listed in any Purchase Order ("**Deliverables**").

1. TERMS AND CONDITIONS. Any Deliverables XNRGY purchases from Supplier are purchased subject to the following: (i) if Supplier and XNRGY have a fully executed agreement in effect then the terms of that agreement, together with these Terms, to the extent these Terms are not in conflict with the signed agreement, constitute the complete agreement between the parties; or (ii) if Supplier and XNRGY do not have a fully executed agreement in effect, then these Terms constitute the complete agreement between the parties. A Purchase Order is an offer from XNRGY expressly made and conditional upon Supplier's acceptance of these Terms. Supplier shall be deemed to have accepted a Purchase Order upon written acknowledgment, commencement of performance, shipment of Deliverables, acceptance of payment, or failure to reject the Purchase Order within three (3) business days. Any other terms or conditions proffered by Supplier which differ from or are in addition to the Agreement are expressly rejected and shall not have any application to any purchase made by XNRGY from Supplier.

2. FEES AND PAYMENT.

2.1 Prices. Prices are: (i) stated in the currency specified on the Purchase Order and, if none is specified, in U.S. dollars; (ii) firm and not subject to increase for the duration of the Agreement, and Supplier shall bear all cost increases, including those arising from tariffs, duties, commodity or raw-material price movements, freight, surcharges, or currency fluctuation; and (iii) DDP (Incoterms 2020) at the location specified on the Purchase Order. XNRGY will not be a party to the importation of Deliverables. All purchases will be consummated subsequent to importation, prices will be inclusive of all duties and other costs of customs clearance and Supplier will not cause or permit XNRGY's name to be shown as "importer of record" on any customs declaration.
No extra charges of any kind will be allowed unless specifically agreed to by XNRGY in writing.

2.2 Preferential Pricing. Supplier warrants that it is selling the Deliverables to XNRGY at the lowest prices and upon the most favorable terms (including, without limitation, volume, quality and/or payment terms) that it offers any other customer for Deliverables of the same or similar quality and volume. If, during the term of the Agreement, Supplier makes an offer to sell any such Deliverables to a third party at a lower price or upon terms that are more favorable than applicable under the Agreement, Supplier shall notify XNRGY and an equivalent reduction or modification will apply to all Deliverables purchased or to be shipped thereafter under the Purchase Order.

2.3 Invoices. Supplier shall submit all invoices relating to Canadian orders to payables@xnrgy.com and all invoices relating to USA orders to payableUS@xnrgy.com . Payment for undisputed invoices shall be made by XNRGY ninety (90) days following the later of (i) XNRGY's receipt and acceptance of the Deliverables and (ii) XNRGY's receipt of a correct and complete invoice in accordance with the terms available at https://xnrgy.com/suppliers/supplier-invoicing-guidelines/ . Where applicable law prescribes a maximum payment period for the transaction, payment shall be made within that period. XNRGY may, at its option, pay earlier in exchange for a prompt payment discount agreed in writing. Payment shall not constitute acceptance of Deliverables. XNRGY shall have no obligation to pay invoices submitted more than 180 days following receipt of Deliverables.

2.4 Taxes. Unless prohibited by law, Supplier will separately indicate on its invoices any taxes imposed on the sale or delivery of the Deliverables. XNRGY will be responsible only for sales, use, and similar transaction taxes that Supplier is required by law to collect from XNRGY. Supplier shall be responsible for all other taxes, duties, tariffs, levies, and assessments, including taxes based relating to Supplier's operations. XNRGY may provide exemption certificates in lieu of payment.

2.5 Set-Off. XNRGY may, at any time, set off any liability or amount owed by Supplier to XNRGY or any of its affiliated companies against any amount payable by XNRGY.

3. DELIVERABLES.

3.1 Forecasts. XNRGY may provide Supplier with forecasts of its anticipated future requirements. Supplier acknowledges that any such forecasts are for informational purposes only and are based on factors that may change over time. XNRGY makes no representation, warranty, guaranty or commitment of any kind or nature, express or implied, regarding any such forecasts, including, without limitation, with respect to the accuracy or completeness of such forecasts.

3.2 Change Orders. Prior to shipment of any Deliverables, XNRGY reserves the right to change any specifications, drawings, delivery dates, quantities or other items covered by the Purchase Order by giving Supplier written notice. Supplier will promptly notify XNRGY of any resulting increase or decrease in cost or other required modifications and XNRGY must agree to any adjustments in writing before Supplier implements such changes. If the parties are unable to agree on an adjustment, Supplier shall nevertheless proceed with the change as directed by XNRGY, and the parties shall negotiate in good faith an equitable adjustment to price and delivery schedule.

3.3 Quality. Supplier will not change the product design, technical specifications, manufacturing location, manufacturing process, raw materials or proportions of raw materials used in Deliverables ordered by XNRGY unless Supplier notifies XNRGY in writing of the change at least ninety (90) days before its planned implementation. If XNRGY does not agree to the proposed changes XNRGY may cancel the Purchase Order without further liability to Supplier. Where a change is required by law or is necessary to address a safety issue on shorter notice, Supplier shall notify XNRGY and the parties shall cooperate in good faith to qualify the change. Supplier shall maintain and enforce all measures necessary to secure the quality of Deliverables and the manufacturing process thereof, including but not limited to quality control standards, inspection standards and specifications. Supplier shall submit root cause analysis and corrective action within five (5) business days of notification by XNRGY of any quality issue and

implement permanent corrective action within mutually agreed timelines. Supplier will be liable for all losses and damages that XNRGY may suffer if Supplier does not comply with the foregoing requirements.

3.4 Continuity of Supply. Supplier shall make Deliverables, service, and spare parts therefor, available to XNRGY for at least ten (10) years following the last shipment of the applicable Deliverable. If Supplier discontinues or intends to discontinue any part or an entire Deliverable, it shall give XNRGY at least twelve (12) months' prior written notice and permit XNRGY to place a final lifetime buy at prices no greater than those last in effect. If Supplier ceases to supply and cannot furnish an equivalent, Supplier shall, at XNRGY's option, license or transfer to XNRGY the tooling, drawings, specifications, and know-how necessary for XNRGY or its designee to manufacture the Deliverable.

3.5 XNRGY Property. All tooling, dies, molds, fixtures, patterns, gauges, test equipment, materials, and other property furnished by XNRGY to Supplier, or paid for in whole or in part by XNRGY, is and remains the exclusive property of XNRGY ("**XNRGY Property**"). Supplier shall segregate and clearly mark XNRGY Property as XNRGY's, hold it at Supplier's risk, insure it for full replacement value with XNRGY named as loss payee, use it solely to perform under Purchase Orders for XNRGY, maintain it in good working order at Supplier's expense, and not sell, encumber, move, or dispose of it without XNRGY's prior written consent. Upon reasonable notice and during normal business hours, or immediately upon Supplier's default or insolvency, XNRGY may enter Supplier's premises to inspect or retake possession of XNRGY Property without payment, and Supplier waives any requirement of judicial process to the extent permitted by applicable law. Supplier waives and shall cause its lenders to waive any lien or security interest in XNRGY Property.

4. DELIVERY.

4.1 Time is of the Essence. Delivery dates are firm and TIME IS OF THE ESSENCE WITH RESPECT TO DELIVERY. Supplier will promptly notify XNRGY in writing if Supplier anticipates difficulty in complying with a delivery date and will use all commercially reasonable efforts to meet the delivery date. If Supplier fails to meet a delivery date, XNRGY may procure replacement Deliverables and Supplier will be responsible for all costs incurred by XNRGY as a result, provided XNRGY gives Supplier notice and a reasonable opportunity, not to exceed five (5) business days, to cure. XNRGY may also require expedited shipment at Supplier's expense.

4.2 Packaging. Supplier shall, at its expense, package and preserve the integrity and quality of the Deliverables according to best industry practices to ensure receipt of the Deliverables in an undamaged condition.

4.3 Title. Notwithstanding Section 2.1, Title and risk of loss will transfer upon delivery to, inspection by, and acceptance by XNRGY at the location specified in the Purchase Order. Supplier bears all risk of loss or damage until such transfer, notwithstanding any inspection, payment, or prior passage of title. If XNRGY rejects or revokes acceptance of any Deliverables, title and risk of loss revert to Supplier upon notice of rejection, and XNRGY shall hold such Deliverables at Supplier's risk and expense pending Supplier's instructions.

4.4 Safety. Where Supplier or its personnel enter XNRGY or XNRGY customer premises, Supplier shall comply with all applicable site safety, security, environmental, access rules, and ensure its personnel are properly trained, licensed, and equipped. Supplier shall be solely

responsible for the safety of its personnel. Prior to first shipment and upon any changes, Supplier shall furnish current Safety Data Sheets and all required hazard communication, labeling, and transport documentation for any chemical, refrigerant, or hazardous material supplied. Supplier warrants that all refrigerants supplied are virgin or certified reclaimed as specified, meet AHRI 700 purity requirements, and are accompanied by all documentation required under applicable HFC allowance, tracking, and reclamation rules.

5. ACCEPTANCE. XNRGY may inspect and test all Supplier Deliverables, materials, equipment, facilities, books and records relating to the Deliverables upon reasonable notice and Supplier will provide, without charge, all reasonable assistance required. Payment shall not constitute acceptance by XNRGY of any Deliverables. XNRGY may inspect, reject, repair, replace, or return nonconforming Deliverables at Supplier's expense. XNRGY shall have ninety (90) days from delivery, or from discovery of a latent defect, to inspect and reject nonconforming Deliverables. Acceptance by XNRGY shall not constitute a waiver of any future claims, including claims for latent defects, fraud, or breach of warranty. Supplier shall retain all records relating to the Deliverables for seven (7) years following delivery.

6. WARRANTIES

6.1 Supplier. Supplier warrants:

(a) All Deliverables will be: (i) free of any claims by third parties, including any claims that the Deliverables, or the use thereof, will in any way infringe or contribute to the infringement of any intellectual property right, and no claim, action or suit alleging any such infringement or contribution to infringement is pending or threatened against Supplier, its employees, agents, suppliers or contractors; (ii) free of any open source software or other third party software that imposes any obligations or conditions on XNRGY without XNRGY's written consent; (iii) in strict compliance with the specifications, samples, drawings or other descriptions approved by XNRGY in writing; (iv) merchantable; (v) free from defects in design, materials and workmanship; (vi) new, unused, and not refurbished, reconditioned, counterfeit, gray-market, or illegal provenance; and (vii) to the extent that XNRGY relies on Supplier to specify the Deliverables, or to the extent Supplier knows or has reason to know of XNRGY's intended use, fit for their intended purpose.

(b) It possesses the requisite expertise, facilities, and equipment necessary and appropriate to perform required services, and that all services will be performed in accordance with the standards of care and diligence normally practiced by persons performing similar services and in the best workmanlike manner.

(c) To the extent any Deliverable includes software, firmware, or embedded code, Supplier further warrants that it will perform in all material respects in accordance with its documentation, is free of viruses, malicious code, back doors, time bombs, disabling devices, or undisclosed telemetry, and does not incorporate any open source or other third-party component in a manner that would require XNRGY to disclose, license, or make available any source code or intellectual property.

The foregoing warranties are in addition to, and do not limit, any warranties implied by law or provided elsewhere in the Agreement and will be in effect for thirty-six (36) months from the date XNRGY's final product is first placed into operation. Any replacement Deliverables will also be subject to the above warranties and warranty period. The warranty period for repaired Deliverables will be extended to account for the time lapsed until the repair was completed or replacement was delivered.

6.2 Remedies. If any Deliverables fail to conform to the above warranties, Supplier will, at XNRGY's option, compensate XNRGY for any related costs incurred by XNRGY and: (i) with respect to products, replace or repair the nonconforming products at Supplier's cost; (ii) with respect to services, re-perform all services necessary to correct any such nonconformity at Supplier's cost; or (iii) refund the purchase price of the nonconforming Deliverables. If Supplier does not replace, repair or re-perform, as applicable, within a reasonable time after notice, XNRGY may do so at Supplier's expense. If Deliverables of the same type exhibit the same or substantially similar defect in three percent (3%) or more of units shipped within any twelve (12) month period, or if XNRGY otherwise reasonably determines that a systemic or root-cause defect exists, Supplier shall, at its expense, promptly investigate, provide root cause analysis, and repair, replace, or refund all affected units, whether or not individually failed, and shall reimburse XNRGY for all costs of recall, retrofit, field service, removal, reinstallation, transportation, and customer remediation. The remedies in this Section are cumulative and in addition to all other remedies available at law or in equity.

6.3 Compliance with Laws. Supplier represents that Supplier and all Deliverables shall comply with all applicable foreign, domestic, federal, state and local laws, orders, rules, regulations, guidelines, standards, limitations, controls, prohibitions, or other requirements adopted pursuant to such laws, including but not limited to OSHA, EPA, REACH, RoHS, WEEE, ASHRAE, UL, CSA, AHRI, PFAS, as applicable. Supplier shall, and shall cause its personnel to, comply with all applicable all applicable export control and economic sanctions, anti-bribery and corruption and all applicable conflict mineral laws and regulations, including disclosure obligations. Supplier, its subsidiaries, and contractors shall not, directly or indirectly, use, or benefit from, slave, prisoner, child, or any other form of forced or involuntary labor. Upon request, Supplier shall provide XNRGY with supply-chain traceability information, country-of-origin and smelter/refiner data, and such other information as XNRGY reasonably requires to satisfy its own regulatory, customer, or disclosure obligations. Supplier's failure to comply with this provision shall constitute a material breach of this Agreement and XNRGY may terminate this Agreement immediately without any further obligations hereunder.

6.4 Supplier Conduct. Supplier shall, at all times, abide by the terms and conditions of XNRGY's Supplier Code of Conduct available at https://xnrgy.com/suppliers/supplier-code-of-conduct/, which may be modified from time to time. Supplier represents that neither it nor any of its owners, directors, officers, employees, or subcontractors is a "Sanctioned Person" per OFAC regulations and SDN list, or owned or controlled by one, is listed on any restricted-party list maintained by the U.S., Canada, the EU, or the UK, or is subject to debarment from government contracting. Supplier shall not offer or provide anything of value to any government official or to any XNRGY employee to obtain or retain business or secure any improper advantage. Supplier shall notify XNRGY promptly if any of the foregoing representations ceases to be accurate, and XNRGY may terminate the Agreement immediately.

6.5 Cybersecurity. Supplier shall implement and maintain an information security program consistent with recognized industry frameworks (such as ISO 27001 or NIST SP 800-171), appropriate to the sensitivity of the data it handles, including access controls, encryption of XNRGY data in transit and at rest, vulnerability management, and personnel background screening. Supplier shall notify XNRGY without undue delay and in no event later than seventy-two (72) hours after becoming aware of a security incident affecting XNRGY data, systems, or Deliverables, shall cooperate fully in investigation and remediation, and shall bear the costs of investigation, notification, credit monitoring, and remediation arising from an incident caused by Supplier or its subcontractors. Where Supplier processes personal information on XNRGY's behalf, Supplier shall do so solely on XNRGY's documented instructions in compliance with applicable data protection laws. Supplier shall not connect any device or software to XNRGY's networks or install any remote-access capability without XNRGY's prior written consent.

7. CONFIDENTIALITY.

7.1 Confidential Information. "**Confidential Information**" means any non-public information disclosed by either party to the other that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including without limitation, the terms of the Agreement, information about a party's business, operations, vendors or customers. The obligations in this Section shall continue for three (3) years following disclosure, except that they continue indefinitely as to any information constituting a trade secret for so long as it remains a trade secret under applicable law.

7.2. Nondisclosure. Each party shall treat Confidential Information as strictly confidential and use the same care a reasonable person would under similar circumstances. The parties agree not to use such Confidential Information except for the purposes set forth in the Agreement and shall disclose such Confidential Information only to those directors, officers, employees and agents of such party (a) whose duties justify their need to know such information, and (b) who have been informed of their obligation to maintain the confidentiality of such Confidential Information. The receiving party will promptly notify the disclosing party if it learns of any unauthorized possession, use or disclosure of the Confidential Information and will provide such cooperation as the disclosing party may reasonably request, at the disclosing party's expense, to protect the disclosing party's rights with respect to the Confidential Information.

7.3. Exceptions. Confidential Information shall not include information that: (a) is publicly available at the time disclosed, (b) is or becomes publicly available through no fault of the receiving party, or its employees, contractors or agents, (c) is rightfully communicated to the receiving party by persons not bound by confidentiality obligations, (d) is already in the receiving party's possession free of any confidentiality obligations at the time of disclosure, or (e) is independently developed by the receiving party. The receiving party may disclose Confidential Information to the limited extent necessary to comply with applicable law or the order of a court of competent jurisdiction or other governmental body having authority over such party, provided that the party making the disclosure will first have given notice to the other party, unless the party is prohibited by law or such court or body from providing such notification.

7.4 Relief. The parties acknowledge that a breach of their confidentiality obligations hereunder would cause irreparable harm for which monetary damages are inadequate, and the disclosing party shall be entitled to seek injunctive and other equitable relief without posting bond or proving actual damages, in addition to all other remedies available.

8. INTELLECTUAL PROPERTY.

8.1 XNRGY IP. Nothing in this Agreement will serve to convey or transfer to the Supplier or its affiliates or any third party any right, title, interest or license to any XNRGY intellectual property or intellectual property rights, expressly or by implication. Any designs, manufacturing drawings or other information submitted to Supplier remain the exclusive property of XNRGY. Supplier shall not, without XNRGY's prior written consent, copy such information or disclose such information to a third party. Supplier shall not use XNRGY names, logos, service marks, trademarks, marketing collateral and/or other proprietary rights for any purpose or in any manner without XNRGY's prior written consent.

8.2 Deliverables. Supplier hereby assigns and agrees to assign to XNRGY all right, title and interest to any and all inventions, patents, copyrights, trade secrets, software, designs, drawings, models, schematics, improvements, work product and other intellectual property created by Supplier as a result of or arising in connection with the Deliverables supplied under the Agreement or derived from XNRGY's Confidential Information or intellectual property.

8.3 License. Any works created by Supplier for XNRGY under the Agreement are and will remain the sole and exclusive property of XNRGY, and the Parties agree that such works are "works made for hire" under the US Copyright Act to the extent they qualify as such. To the extent any such work does not qualify as a work made for hire, Supplier hereby irrevocably assigns all right, title, and interest therein to XNRGY and waives all moral rights therein to the fullest extent permitted by law. Supplier shall execute all documents and take all actions reasonably necessary to perfect and record XNRGY's ownership. To the extent any Supplier intellectual property not assigned above is embedded in or necessary to XNRGY's use of the Deliverables, Supplier grants XNRGY and its affiliates a perpetual, worldwide, irrevocable, paid-up, royalty-free, non-exclusive, sublicensable license to make, have made, use, offer to sell, sell, import, display, copy, and create derivative works of the Deliverables. Deliverables shall not include third party software, including but not limited to open-source software, without XNRGY's prior written consent. Where Supplier furnishes commercially available off-the-shelf software or firmware not developed specifically for XNRGY, Supplier grants XNRGY and its affiliates, customers, and end users a perpetual, worldwide, irrevocable, non-exclusive, fully paid-up, transferable license to use, reproduce, and distribute it as embedded in or necessary to the operation, maintenance, repair, and resale of XNRGY's products, together with the right to obtain updates, security patches, and support.

9. INSURANCE. Supplier shall obtain and maintain, throughout the term of the Agreement, the following insurance coverage:

i. Workers' Compensation/Work-related Injury Insurance in accordance with the statutory requirements of the jurisdiction in which Supplier's employees are located;
ii. Commercial General Liability with limits of $5 million each occurrence, $10 million aggregate,
iii. Automobile Liability with limits of $5 million each occurrence for bodily injury and property damage combined, covering all "owned," "hired" and "non-owned" automobiles and including contractual liability coverage; and

iv. Errors and Omissions Liability covering the liability for financial loss due to error, omission of Supplier. If any of the services includes engineering or design services or other services performed by a licensed professional, the Professional Errors and Omissions Liability with limits of liability of not less than $5 million each claim and $10 million in the aggregate; and

v. If Supplier brings onto XNRGY's (or XNRGY's customer's) premises any solid, liquid, gaseous or thermal irritant, contaminant or hazardous or toxic substance, then Pollution Liability or Environmental Liability with limits of liability of not less than $5 million per occurrence covering liability for bodily injury and property damage arising from the release, discharge, escape, dispersal or emission of pollutants, whether gradual or sudden, and includes coverage for the costs and expense associated with clean-up, testing, monitoring and treatment of the pollutants.

All insurance required will be written with insurers rated A or better by the latest "A.M. Best" Guide" and where permitted by applicable law a waiver of subrogation from Supplier and its insurers will be provided in favor of XNRGY. All policies, with the exception of Workers' Compensation, will identify XNRGY as an additional insured and require that XNRGY receive at least thirty (30) days' notice prior to cancellation or termination. Supplier's insurance will be primary and noncontributory to that maintained by XNRGY. The insurance required under this Section, shall be independent of the indemnity obligations of the Agreement, and are not designed solely to guarantee payment of Supplier's indemnity obligations. Supplier shall, at the request of XNRGY, provide XNRGY with certificates of insurance, satisfactory to XNRGY, of the insurance coverages and endorsements set forth in this section.

10. INDEMNITIES.

(a) To the fullest extent permitted by law, except to the extent caused by the gross negligence or willful misconduct of XNRGY, Supplier agrees to defend, indemnify, hold harmless and reimburse XNRGY, its officers, directors, shareholders, affiliates, subsidiaries, employees, agents, customers and assigns from and against all claims, suits, actions, proceedings, damages, losses and expenses, including attorneys' fees, arising out of, related to, or resulting from: (a) any breach of any representation or warranty made by Supplier in the Agreement; (b) any negligence or willful misconduct of Supplier or its agents or subcontractors in connection with performance under the Agreement; (c) any litigation, proceeding or claim by any third party relating to the obligations of Supplier under the Agreement; (d) any violation of law by Supplier, its employees, agents, affiliates, contractors or subcontractors; (e) any actual or alleged claim that the Deliverables infringe or misappropriate any third party's intellectual property rights; (f) any death of or bodily injury to any person, or damage to or loss of any property, caused by or arising from the Deliverables or Supplier's performance, including any claim in strict liability, product liability, or failure to warn; (g) any recall, retrofit, field correction, or safety notice affecting the Deliverables or any XNRGY product incorporating them; (h) any lien, encumbrance, or claim asserted against XNRGY Property or against Deliverables in XNRGY's possession; and (i) any assessment of

duties, tariffs, penalties, or fines resulting from Supplier's misstatement of country of origin, tariff classification, or customs valuation.

(b) In the event of an infringement of any third party's intellectual property rights by the Deliverables, Supplier at its own expense shall procure the right for XNRGY to continue using the Deliverables, modify the Deliverables so that they become non-infringing without incurring a material diminution in function in XNRGY's reasonable estimation or replace the Deliverables at no cost to XNRGY with non-infringing substitutes provided that the substitutes do not entail a material diminution in function.

(c) XNRGY shall notify Supplier of any indemnified claim within a reasonable time after becoming aware, provided that a delay in notice relieves Supplier of its obligations only to the extent Supplier is materially prejudiced. Supplier's duty to defend shall arise upon tender of the claim. Supplier shall assume the defense with counsel reasonably acceptable to XNRGY, and XNRGY may participate at its own expense with counsel of its choosing. Supplier shall not settle any claim in a manner that imposes any obligation or admission on XNRGY, or that fails to include a full release of XNRGY, without XNRGY's prior written consent. If Supplier fails to assume the defense promptly, XNRGY may defend and settle the claim at Supplier's expense. Supplier's obligations under this Section are independent of, and not limited by, the insurance required under Section 9.

11. LIMITATION OF LIABILITY. XNRGY'S AGGREGATE LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY XNRGY TO SUPPLIER UNDER THE APPLICABLE PURCHASE ORDER IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. IN NO EVENT SHALL XNRGY BE LIABLE TO SUPPLIER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING DAMAGES FOR LOST PROFITS, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF DATA, OR LOST USE OF PROPERTY OR CAPITAL), EVEN IF XNRGY HAS BEEN ADVISED OF OR IS OTHERWISE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. SUPPLIER ACKNOWLEDGES THAT XNRGY'S RECOVERABLE DAMAGES INCLUDE COSTS OF RECALL, RETROFIT, FIELD SERVICE, EXPEDITED FREIGHT, LINE-DOWN AND PRODUCTION DISRUPTION COSTS, AND LIABILITIES ASSERTED BY XNRGY'S CUSTOMERS.

12. TERMINATION.

12.1 Termination for Convenience. XNRGY may terminate for convenience, upon thirty (30) days' prior written notice to Supplier, this Agreement, any Purchase Order, or its purchase of any quantity of Deliverables prior to the delivery thereof. Supplier shall, upon receipt of such notice, stop work and mitigate its costs to the extent reasonably practicable.

12.2 Termination for Cause. Either party may terminate the Agreement or any Purchase Order upon thirty (30) days' prior written notice if the other party breaches any material term thereof, provided that the breaching party may cure the breach within that notice period and thereby abate the termination or if the other party becomes insolvent, files or has filed against it a petition in bankruptcy, makes an assignment for the benefit of creditors, or has a receiver

appointed. Notwithstanding the foregoing, XNRGY may terminate the Agreement or any Purchase Order immediately upon written notice, if Supplier breaches its obligations relating to confidentiality, delivery, any representations or warranties.

12.3 Right to Assurances. If XNRGY has reasonable grounds to believe that Supplier may not perform its obligations under this Agreement (including but not limited to missed delivery deadlines, financial distress, insolvency proceedings, loss of a critical supply source, loss of control, or any statement indicating an intent not to perform), XNRGY may demand in writing that Supplier provide adequate assurances of performance. Supplier shall provide adequate assurances of performance in a form reasonably satisfactory to XNRGY, such as financial security or evidence of secured sourcing by way of example, within ten (10) days of the demand. XNRGY may suspend performance of its own obligations hereunder, including payment, until adequate assurances are provided. If Supplier fails to provide adequate assurance within the specified period, such failure constitutes a repudiation of the Agreement and XNRGY may terminate the Agreement or related Purchase Orders for cause, procure substitute goods and recover the cost difference plus incidental or consequential damages and/or pursue any other available remedy. The foregoing rights are cumulative and in addition to any other rights XNRGY has under the Agreement and applicable law.

12.4 Effects of Termination. In the event of termination, XNRGY's sole liability to Supplier, and Supplier's sole and exclusive remedy, is payment for: (i) conforming Deliverables that were delivered and accepted by XNRGY prior to the effective date of termination, (ii) Deliverables delivered after the effective date of termination, subject to XNRGY's acceptance pursuant to any active Purchase Order not terminated, and (iii) only those conforming Deliverables completed prior to the effective date of termination and not otherwise the subject of a good faith dispute. Any fees paid in advance by XNRGY for Deliverables not actually delivered or rendered prior to the date of termination shall be reimbursed by Supplier in their entirety within ten (10) days. In the case of termination for convenience, XNRGY shall additionally reimburse Supplier's documented, reasonable, and unavoidable costs for work in process and raw materials specifically acquired for the terminated Purchase Order that Supplier cannot mitigate through return, resale, or use, provided Supplier submits a substantiated claim within thirty (30) days of termination; in no event shall XNRGY be liable for lost profits, unabsorbed overhead, or anticipated margin. Upon termination for Cause, XNRGY may recover all damages as permitted by law, including reasonable costs incurred to source replacement Deliverables.

12.5 Transition Services. Upon expiration or termination of the Agreement, Supplier shall take all necessary actions to ensure uninterrupted supply of Deliverables to XNRGY and facilitate transition to an alternative Supplier, including: (a) maintaining sufficient inventory to support an orderly transition; (b) returning all XNRGY-furnished tooling and property in good condition, reasonable wear excepted; (c) permitting XNRGY to access and participate in the removal of XNRGY's property at a mutually agreed time and place.

12.6 Survival. All provisions of this Agreement which by their nature should apply following the termination or expiration of this Agreement will remain in effect.

13. MISCELLANEOUS

13.1 Governing Law; Venue. The Agreement is governed by and construed in accordance with the substantive laws of the State of Delaware, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Where Supplier's principal place of business is in North or South America, the parties irrevocably submit to the exclusive jurisdiction of the state and federal courts located in the State of Delaware, waive any objection to venue or forum non conveniens. Where Supplier's principal place of business is outside of North or South America, any dispute arising out of or relating to the Agreement shall be finally settled by arbitration administered by the American Arbitration Association under its International Dispute Resolution Procedures. The seat of arbitration shall be New York, New York. The tribunal shall consist of one (1) arbitrator where the amount in dispute is less than five million U.S. dollars and three (3) arbitrators otherwise. The language of the arbitration is English. The award is final and binding, and judgment on the award may be entered in any court of competent jurisdiction, including any court where a party or its assets are located. Nothing in this Agreement prevents either party from seeking interim or conservatory relief from any court of competent jurisdiction. The arbitration and the award are confidential, except as necessary to enforce the award or comply with law. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THE AGREEMENT WHERE SUCH ACTION IS PERMITTED. Each party shall bear its own costs and attorneys' fees, except that a tribunal or court may award costs and reasonable attorneys' fees to the prevailing party.

13.2 Severability. If a court holds any provision of the Agreement to be illegal, invalid or unenforceable, the rest of the Agreement will remain in effect and the Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

13.3 Waiver. The rights and remedies set forth in the Agreement are not exclusive and are cumulative and in addition to all other legal or equitable rights and remedies available under applicable law. A party's failure at any time to enforce any right or remedy available to it under the Agreement, or otherwise, shall not be construed as a waiver of such right or remedy.

13.4 Assignment. Neither party shall be entitled to assign the Agreement or its rights or obligations under the Agreement, whether voluntarily or by operation of law, except with the written consent of the other party; provided, however, that XNRGY may assign the Agreement without Supplier's consent to any affiliate or to any successor by merger, consolidation, or acquisition of all or substantially all of its assets or of the relevant division or business unit. Supplier remains fully responsible for the acts and omissions of any permitted subcontractor and shall flow down the substantive obligations of the Agreement to it. Supplier shall notify XNRGY at least sixty (60) days before any change of control, and XNRGY may terminate the Agreement without liability upon such change of control. The Agreement shall bind each party and its successors and permitted assigns.

13.5 Notices. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and, in the case of notices to XNRGY, sent to 9019 E. Technology Ave., Mesa, AZ 85212 with a copy to Legal@XNRGY.com, and, in the case of Supplier, to the address listed on the Purchase Order, and shall in each case be effective upon receipt.

13.6 Force Majeure. Notwithstanding anything to the contrary in the Agreement, neither party will be responsible for any failure to fulfill its obligations, in whole or in part, due to causes beyond its reasonable control ("**Force Majeure Event**"), including without limitation, any cause preventing performance of an obligation under the Agreement that is beyond the reasonable control of the non-performing party, and which, by the exercise of due diligence, could not be

overcome, including without limitation, fire, flood, sabotage, shipwreck, embargo, explosion, accident, pandemic, epidemic, riot, acts of a governmental authority, and acts of God. In no event shall the following constitute a Force Majeure Event: Supplier's ability to sell Deliverables at a better price; Supplier's economic hardship or increased cost in buying or otherwise accessing raw materials, components, labor, or energy; labor disturbances affecting Supplier or its subcontractors; failure or default of Supplier's own suppliers or subcontractors (unless the failure itself results from an event that would qualify as Force Majeure as to Supplier); Supplier's failure to maintain adequate capacity, inventory, or business-continuity and disaster-recovery arrangements; or any event Supplier could have avoided through commercially reasonable precautions. During any Force Majeure Event, Supplier shall allocate available Deliverables to XNRGY on a basis no less favorable than that afforded to Supplier's other customers or to Supplier's own internal use, and XNRGY may, without liability, procure substitute Deliverables from third parties and reduce its commitments accordingly. The non-performing party shall notify the other Party of any Force Majeure Event within three (3) days after such occurrence by giving written notice to the other Party stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect. In the event the suspension of performance continues for thirty (30) days after the date of the occurrence, either party may terminate this Agreement by written notice to the other party.

13.7 Relationship. XNRGY and Supplier are independent contracting parties. The Agreement shall not constitute the parties as principal and agent, partners, joint venturers, or employer and employee.

13.8 Amendment of Terms. XNRGY may update these Terms from time to time by posting a revised version at https://xnrgy.com/suppliers/terms-and-conditions-of-purchase/.

13.9 Language. The parties have requested that the Agreement and all related documents be drawn up in the English language. Les parties ont demandé que la présente convention ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.

13.10 Entire Agreement. The Agreement constitutes the entire agreement between the parties and supersedes all other communications between the parties relating to the subject matter of the Agreement. XNRGY's Purchase Orders are offers that may only be accepted in full. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement the Agreement shall be binding unless made in writing and signed by both parties, expressly and specifically referencing the Agreement. Nothing in the Agreement confers upon any person other than XNRGY and Supplier any right or remedy under or by reason of this Agreement. All typographical or clerical errors made by XNRGY in any Purchase Order are subject to correction. In the event of conflict, the following order of precedence governs: (i) any separate written agreement signed by authorized representatives of both parties that expressly references and supersedes these Terms; (ii) these Terms; and (iii) the relevant Purchase Order. No click-through, shrink-wrap, browse-wrap, end-user license, or similar terms presented in connection with any Deliverable, and no acknowledgment, invoice, or packing document issued by Supplier, shall bind XNRGY or modify the Agreement, regardless of any act by XNRGY personnel that might otherwise be construed as assent.