

Terms and Conditions of Sale

These terms and conditions of sale ("Agreement") are applicable to any order placed with and accepted by Xytronix Research & Design, Inc. (referred to herein as "XRDI"). By placing this order and/or using XRDI "Products," "Buyer" agrees to be bound by and comply with these terms and conditions of sale.

1. ACCEPTANCE OF ORDER - Acceptance of any order is subject to pre-payment or credit approval and acceptance of order by XRDI.
2. PRICES - Orders are billed at the prices (in US dollars) in effect at the time of shipment unless a written quote is provided. If a quote is provided, prices are valid for period specified. If a quote is provided but no period is specified, quoted prices will be applicable for thirty (30) days. Prices listed are subject to change without notice. All prices quoted are FOB XRDI's facility in Nibley, Utah, USA. Shipping charges (with insurance) will be added to invoice unless Buyer provides a valid shipping account number. Taxes will be added to orders shipped where XRDI is required to collect taxes unless tax exemption certificate is provided in advance. Buyer is responsible for any additional taxes, duties, import fees, etc., that may be required by their local government or by the carrier.
3. PAYMENT - Full payment is due in advance unless net thirty (30) terms are set up.
4. NET-THIRTY (30) ACCOUNTS - (a) All Net-Thirty orders are subject to credit approval and acceptance by XRDI. (b) Payment is due thirty (30) calendar days from the date of the invoice. (c) If Buyer does not pay the invoiced amount on or before the invoice due date, Buyer will, in addition, pay finance charges of one and one-half percent (1.5%) per month on the late balance until paid in full and XRDI reserves all legal rights, including but not limited to, the right to (1) withhold shipment of Products until full payment is made; and/or (2) revoke any credit extended to Buyer; and/or (3) withhold technical support, firmware updates, or repairs on all Products sold to Buyer. Any such action shall not relieve Buyer of any of their existing obligations, including the obligation of Buyer to pay for all Products received from XRDI. XRDI shall retain a security interest in the Products until final payment is received. Buyer is responsible to XRDI for all reasonable attorneys' fees, court costs, and/or collection agency fees should Buyer default or be late on any payments.
5. PACKAGING AND DELIVERY - XRDI reserves the right to select the manner in which the Product is packaged. Special requirements for packaging will be subject to extra charges, unless otherwise agreed by XRDI in writing. Shipping dates quoted by XRDI are made in good faith but are not guaranteed. XRDI will use its discretion as to the selection of shipping services and routings unless otherwise specified and paid for by Buyer.
6. SHIPMENT AND RISK OF LOSS - All orders are shipped FOB, XRDI's facility in Nibley, Utah, USA. Risk of loss of the Products shall pass to the Buyer upon delivery to the common carrier. All shipments are insured through the carrier and insurance cost is added to Buyer's shipping cost. Buyer may choose not to purchase insurance by submitting a signed waiver indicating that Buyer understands and accepts all risks by not insuring shipments. Waivers must be submitted with order. Buyer is to direct loss/damage claims to carrier.
7. INSPECTION AND ACCEPTANCE - The Products covered hereby shall be deemed inspected and accepted within ten (10) days after receipt thereof unless a written notice of claim is given by Buyer within the ten (10) day period.
8. LIMITED WARRANTY - XRDI warrants our Products to be free of defects in workmanship and material under normal use and service and to perform substantially in accordance with published XRDI specifications (subject to reasonable tolerances) for a period of five (5) years from the date of invoice. This five year warranty only applies to products shipped from XRDI (or an authorized XRDI distributor) on or after May 1, 2016 (products shipped before that date continue to have their original twelve (12) month warranty). This warranty includes all standard ControlByWeb products that are manufactured by XRDI (does not include sensors, power supplies, and products that are sold on the ControlByWeb web site but not manufactured by XRDI). Custom Products that are manufactured by XRDI are warranted for a period of twelve (12) months from the date of invoice. XRDI warrants functionality of Products as specified when shipped however XRDI cannot and does not guarantee or warrant ongoing compatibility with software, protocols, or devices that are developed or maintained by third parties such as web browsers, automation software, etc. During the warranty period, XRDI's obligation is limited to, at its option, either repair or replace Products that prove to be defective, which shall be the sole and exclusive remedy under this limited warranty. Section 10-b describes return procedures and shipping costs that are covered and not covered under this warranty.

The foregoing warranty shall not apply to defects or damage resulting from improper use or misuse, neglect, shipping

damage, unauthorized or improper repair, tampering, modification, improper connection, improper installation, or operation outside the electrical/environmental specifications for the product. Further, the warranty does not cover Acts of God, including but not limited to lightning, fire, flood, hurricanes, and tornadoes. This warranty does not cover damage to property, equipment, direct, indirect, consequential, or incidental damage (including damage for loss of business profit, business interruption, loss of data, and the like) arising out of the use or misuse of this product. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL THE LIABILITY OF XRDI TO THE BUYER OR ANY OTHER PARTY EXCEED THE ORIGINAL PURCHASE PRICE OF THE PRODUCT, REGARDLESS OF THE FORM OF THE CLAIM. No other warranty is expressed or implied. XRDI specifically disclaims the implied warranties or merchantability and fitness for a particular purpose.

9. INDEMNIFICATION

Buyer indemnifies XRDI against any loss, damages, injury claims, demands, etc., asserted by or claimed by any third party in connection with or related to Buyer's responsibilities or the products that arise out of the negligent or wrongful acts of the Buyer or third parties affiliated with Buyer.

10. RETURNS AND REPAIRS

(a) RETURN FOR CREDIT OR REFUND: With some exceptions, Products may be returned within 30 days of purchase date for a full refund of the purchase price (excluding shipping). Products returned within that time frame may be opened, but must be in new, resell-able condition and include all components (connectors, cables, etc.) that were shipped with the Products. Orders totaling over \$1000 that were purchased using a credit card will be subject to a 5% restocking fee to cover credit card charges. Unopened Products that are returned more than thirty (30) days but less than ninety (90) days from date of purchase may be returned for a refund of the purchase price minus a 20% restocking fee. Notwithstanding the foregoing, custom Products, special orders, orders of 40 units or more, and/or items that are beyond ninety (90) days from the purchase date may not be returned. Before returning Products, Buyer must contact XRDI and obtain an RMA (Return Merchandise Authorization) number. Products must be well packaged, and returned to XRDI using prepaid, insured shipping. Upon receipt of Products, XRDI will inspect Products before accepting the return. Products that are not in new, resell-able condition or that have missing components will not be accepted, no refund will be given and the Product will be returned to the Buyer at their expense.

(b) RETURN FOR REPAIR - Before returning Products for repair, Buyer must contact XRDI to obtain an RMA number. Before issuing an RMA, an XRDI technician will work with Buyer in an attempt to resolve problems without the need for a return (all Products are fully tested before they are shipped so in many cases problems can be resolved without returning Products). When returns are necessary and authorized, Products must be properly packaged, and returned to XRDI. If repairs are not covered under the Product warranty, XRDI will provide Buyer with repair costs before making repairs. Buyer may choose to proceed with the repair or have XRDI return the Product to Buyer without making the repair at Buyers expense. Buyer shall prepay all charges for shipping to XRDI. For repairs covered under warranty, XRDI will pay the shipping charges to return the product to Buyer as long as the product is shipped within the continental United States and if the repair is done within twelve (12) months from the date of the invoice. For repairs that are not covered under warranty, repairs that are made after twelve (12) months from the date of invoice, and for all Products shipped outside of the United States, Buyer shall pay all shipping charges, duties, and taxes.

All returns must be shipped to: Xytronix Research & Design, Inc.
1681 West 2960 South
Nibley, Utah 84321 USA

11. INTELLECTUAL PROPERTY - Any and all inventions, design, source code, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, work product and information embodying proprietary data existing and owned by XRDI as of the date of the Order shall be and remain the sole and exclusive property of XRDI.

All rights and ownership of any software and firmware incorporated in Products or otherwise supplied to Buyer shall remain the sole and exclusive property of XRDI and/or its third-party providers. Buyer is hereby granted and accepts a personal, non-exclusive, non-transferable, royalt-free license to use the software, as provided and as intended by XRDI, solely for Buyer's internal business purposes in the country in which the software or Product was furnished.

The drawings, text, product depictions, logos, content, product descriptions, and organization of XRDI's catalog, website,

brochures, and users manuals are proprietary to XRDI and protected by intellectual property laws, including but not limited to United States Copyright law and United States Trademark law. XRDI owns copyrights in these referenced works as well as the selection, arrangement, coordination and structure of the arranged content and works. Use of XRDI Products, documentation, and/or web site does not give Buyer or any third party a right to modify, reproduce, transmit, publish, publicly display, adapt, or create derivative works or in any way exploit any of the materials and content contained within these works.

12. CUSTOM PRODUCTS, PRODUCT MODIFICATIONS, AND SERVICES - Buyer understands that when Buyer pays XRDI to modify Products or to build custom versions of Products, the resulting Products are built upon a foundation of hardware, firmware, etc, that have taken XRDI many years to develop. Buyer agrees that XRDI will maintain ownership of Product design, firmware, software, documentation (including users manuals) etc., related to the services provided including all modifications, upgrades and enhancements thereto made to Products during the term of the order. In addition, unless otherwise agreed in writing, title to all tooling necessary to produce the Products shall remain vested in XRDI, weather or not the Buyer pays a tooling charge or pays for such tooling. Tooling may be considered obsolete and destroyed by XRDI if it does not receive any orders from Buyer requiring the use of such tooling for a period of one year.

13. ACCEPTABLE USE - XRDI Products are very robust and reliable; however, XRDI Products may NOT be used in critical medical applications or in any application where their function or failure could cause serious injury or loss of human life. XRDI Products may not be used for any application involving illegal activity.

14. PRODUCT LIFE - XRDI strives to make Products available for long periods of time; however, XRDI reserves the right to discontinue Products at any time and without notice.

15. PRODUCT DOCUMENTATION - Users manuals and other documentation for Products are available on the XRDI web site (www.ControlByWeb.com). Product documentation can only be used for the sole purpose of installing, operating, and supporting XRDI Products. Buyer agrees to comply with XRDI copyrights and understands that manuals must remain fully intact. No part or parts of the manual can be copied, extracted, modified, or changed without written permission from XRDI.

16. FORCE MAJEURE - XRDI shall not be liable for any delay or failure in performance, or for any damages suffered by Buyer by reason of such delay, if caused or arising directly or indirectly from any act beyond XRDI's reasonable control including, but not limited to, acts of God, vandalism, sabotage, accidents, fires, floods, strikes or other labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts, equipment, material, labor, power or transportation, acts of suppliers, interruption of utility services, acts of terrorism, or acts of any unit or agency of government. Any delays so occasioned shall affect a corresponding extension of XRDI's performance dates which are, in any event, understood to be approximate.

17. GOVERNING LAW - These General Terms and Conditions of Sale shall be governed and interpreted in accordance with the laws of the State of Utah, regardless of the laws that might otherwise govern under applicable Utah principles of conflicts of law, and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Venue for any dispute arising from or related to these General Terms and Conditions of Sale shall be exclusively in the federal or state courts of the State of Utah. Prevailing party is entitled to an award of attorney fees in any suit brought based on this agreement.

18. COMPLIANCE WITH LAWS - XRDI will use its commercially best efforts to comply with all federal, state and local laws and regulations governing XRDI's Products. Buyer agrees that it will specifically comply with; (i) the export/re-export laws of the United States, as promulgated by the U.S. Department of Commerce including, if applicable, all requirements of the International Traffic in Arms Regulations and/or the Export Administration Act, as may be amended; (ii) the applicable export/re-export or import controls imposed by foreign countries; and (iii) all applicable laws and regulations imposed by any competent authorities including, without limitation, the U.S. Department of Commerce, and any controls or regulations of the U.S. Foreign Corrupt Practices Act and the anti-boycott regulations of the U.S. Department of State.

19. WAIVER - The failure of either party to enforce any provisions herein shall not be construed to constitute a waiver of such provision or of the right of such party to enforce each and every such provision.

20. SURVIVAL - If a court finds any of these provisions unenforceable, the remaining provisions remain enforceable.

21. ENTIRE AGREEMENT - With the exception of agreements between XRDI and authorized distributors with signed

distributor agreements dated after April 2, 2014, these General Terms and Conditions of Sale sets forth the entire understanding and agreement between the parties, and supersedes all previous and contemporaneous agreements, whether verbal or written, expressed or implied, relating to the subject matter herein. These General Terms and Conditions of Sale may not be altered, amended or modified except by written instrument executed by the authorized representatives of both parties.

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