

XYMOX TECHNOLOGIES, INC.
TERMS AND CONDITIONS OF SALE
February 2021

1. Offer and Acceptance. This writing constitutes an offer or counter-offer by XYMOX Technologies, Inc. (“Xymox”) to sell the products and/or services described in or with this writing in accordance with these terms and conditions of sale; this writing is not an acceptance of any offer made by the buyer to which this offer is addressed (the “Buyer”), and this offer is expressly conditioned upon assent to these terms and conditions of sale. Xymox objects to any different or additional terms or conditions contained or referenced in any request for quotation, purchase order or other form or communication previously or hereafter submitted by Buyer to Xymox. No such different or additional term or condition shall be binding or effective. Buyer shall be deemed to have accepted and assented to this offer and these terms and conditions of sale when: (a) Buyer issues a purchase order that is in response to Xymox’s Quotation or that otherwise references Xymox’s Quotation, and such Quotation includes or references these terms and conditions of sale, (b) Buyer has accepted delivery of the whole or any part of the products or services described herein, or (c) Buyer has otherwise assented to the terms and conditions hereof, whichever occurs first. Upon Buyer’s acceptance of this offer, these terms and conditions of sale, together with the Quotation and/or other materials from Xymox that accompany or incorporate these terms and conditions, shall constitute the entire agreement between Xymox and Buyer on the subject hereof (the “Contract”), superseding all prior and contemporaneous oral and written communications and negotiations. These terms and conditions of sale shall also apply to change orders, if any. This offer expires thirty (30) days after its date unless otherwise specified by Xymox in writing, and it may be revised or withdrawn by Xymox any time prior to acceptance.
2. Cancellation. No order or accepted offer may be canceled or altered by Buyer except upon terms and conditions acceptable to Xymox, as evidenced by Xymox’s prior written consent. Buyer is required to receive and pay for all products and parts that have been run by Xymox. Charges for order cancellations shall be negotiated on a case by case basis. In any event, however, Buyer must promptly pay Xymox for all labor and materials either in process or completed on canceled orders, plus overhead and a reasonable profit.
3. Prices and Payment. Prices quoted are based on the maximum quantities specified by Xymox, whether on Xymox’s Quotation or otherwise. If quantities are reduced by Buyer for any reason, or if Buyer at any time requires delivery of a specific quantity which necessitates an increase in Xymox’s cost of producing the products, Xymox reserves the right to adjust the price(s) accordingly. If the Buyer changes any material or manufacturing requirements for any reason which necessitates an increase in Xymox’s cost of producing products, Xymox reserves the right to adjust the price(s) accordingly. Xymox reserves the right to adjust pricing for any federal, state, or local mandated costs, taxes and tariffs that increase Xymox’s cost of producing products during the life of this Contract. Buyer shall pay the price(s) as adjusted by Xymox pursuant to this section. Invoices are due and payable within thirty (30) days from date of invoice. Interest will be charged at the rate of 1 ½ percent (1.5%) per month (18% per annum) (but not more than the highest rate permitted by applicable law) on all accounts not paid when due, and Buyer shall pay such interest on demand. Xymox reserves the right to change the payment terms provided herein when, in Xymox’s opinion, the financial condition or previous payment record of Buyer so warrants. Buyer shall pay or reimburse on demand all costs, including without limitation attorneys’ fees and collection costs, incurred by Xymox in connection with the collection of late payments or the enforcement of Xymox’s rights under the Contract.
4. Taxes and Other Charges. Each and every manufacturer’s tax, occupation tax, use tax, sales tax, excise tax, duty, custom, tariff, inspection or testing fee, and every other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction(s) between Xymox and Buyer, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Xymox is required to pay any such tax, fee, interest or charge, Buyer shall reimburse Xymox therefor upon demand.
5. Credit. Fulfillment of orders by Xymox shall at all times be subject to its approval of Buyer’s credit. Xymox, at its discretion, may at any time decline to make any shipment or perform any work or services except upon receipt of payment or security upon such terms and conditions as may be satisfactory to Xymox. In the event of any bankruptcy, receivership or insolvency proceedings, whether voluntary or involuntary, against Buyer as debtor, or in the event of the appointment, with or without Buyer’s consent, of a receiver or trustee for Buyer or its assets or an assignee for the benefit of Buyer’s creditors, Xymox may elect to cancel any unfilled order(s) without liability.

6. Delivery, Claims and Force Majeure. Delivery of products to a carrier at Xymox's plant of manufacture shall constitute delivery to Buyer; and regardless of shipping terms or freight payment, Buyer shall bear all risk of loss of or damage to products in transit. Xymox reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; with all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept that installment or remaining deliveries.
- a. Deliveries of up to ten percent (10%) less than the quantity specified on Xymox's Quotation, or up to ten percent (10%) greater than the quantity shown on Xymox's Quotation, shall not be deemed a shortage or an overage, respectively, and Buyer shall pay for the products delivered at the Contract price. Claims for shortages, overages, or other errors in delivery must be made in writing to Xymox within ten (10) days after receipt of shipment. Claims for visible defects must be made within thirty (30) days after receipt of shipment. Failure to make such claims within said time periods shall constitute unqualified acceptance and a waiver of all such claims by Buyer. Claims for loss of or damage to products in transit must be made to the carrier and not to Xymox.
 - b. All shipping and delivery dates are approximate. Xymox shall not be liable for any damage or losses as a result of any delay in shipping or delivery or failure to ship or deliver due to any cause beyond Xymox's reasonable control, whether foreseeable or not, including, without limitation, any act of God, act of Buyer, epidemic, pandemic, public health emergency, embargo, governmental restrictions on transportation, travel or gatherings or shut-down orders, other governmental act, regulation, priority, requirement, order or request, fire, flood, explosion, accident, strike, slowdown, other labor difficulty, sabotage, war, terrorist act or threat, riot, delay in transportation, breakage of equipment, or inability to obtain necessary labor, materials, components or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Xymox's inability to deliver for any reason shall be rescission of this Contract. In cases of shortages of labor, materials, components or facilities, Xymox may allocate the scarce resource among Buyer orders and other customers' orders on any reasonable basis as determined by Xymox in its discretion.
7. Storage. If any products are not shipped within fifteen (15) days after notification to Buyer that they are ready for shipping, for any reason beyond Xymox's reasonable control, including without limitation Buyer's failure to give shipping instructions, Xymox may store such products at Buyer's risk in a warehouse or upon Xymox's premises, and Buyer shall pay all handling, transportation and storage costs at the prevailing commercial rates upon submission of invoices therefor.
8. Changes. Xymox may at any time make such changes in design and construction of products as shall constitute an improvement in the judgment of Xymox. Xymox may furnish suitable substitutes for materials or components that are unobtainable because of priorities or regulations established by governmental authority or unavailable from suppliers.
9. Warranties; Disclaimer. Xymox warrants to the Buyer that products manufactured by it and supplied hereunder shall be free from defects in materials and workmanship for a period of twelve (12) months from date of shipment from Xymox. If within such period any such product shall be proven to Xymox's satisfaction to be defective, such product shall be repaired or replaced, or the purchase price of the product shall be refunded to Buyer, at Xymox's option. Such repair, replacement or refund shall be Xymox's sole obligation and Buyer's exclusive remedy hereunder, and shall be conditioned upon Xymox's receiving written notice of any alleged defect during the applicable warranty period and within ten (10) days after its discovery and, at Xymox's option, return of such product(s) to Xymox, F.O.B. its factory. **THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND XYMOX EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.** Notwithstanding anything to the contrary herein, Xymox's warranty does not cover, and Xymox shall not be responsible for, any defect, damage or failure caused by abuse, misuse, neglect, accident, or improper installation, operation or maintenance.

Any description of the products, whether in writing or made orally by Xymox or Xymox's employees or agents, and any specifications, samples, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Buyer's order, are for the sole purpose of identifying the products and shall not be construed as an express warranty. Any suggestions by Xymox or Xymox's employees or agents regarding use, application or suitability of the products shall not be construed as an express warranty unless confirmed to be such in a writing signed by an authorized representative of Xymox.

10. Returns. Unless otherwise specified by Xymox, all products are custom-made to order by Xymox for Buyer. As a result, no products shipped to Buyer may be returned without Xymox's advance written permission (evidenced by a Returned Materials Authorization ("RMA") number issued by Xymox), which may be granted or withheld in Xymox's sole discretion. Returned products shall be shipped at Buyer's sole risk and expense and must be securely packaged to reach Xymox without damage; and any cost Xymox incurs to put products in marketable condition shall be charged to Buyer. The RMA number must be referenced in Buyer's shipping documents.
11. Infringement.
 - a. Xymox will, at its own expense, defend or settle any claim that may be instituted by any unaffiliated third party against Buyer if and to the extent such claim is based on an allegation that the process(es) used by Xymox to manufacture the products sold by Xymox to Buyer hereunder infringe any valid United States patent, trademark or copyright, if and to the extent such alleged infringement consists of the use of such manufacturing process by Xymox, and not to the purchase or use of such products themselves, or parts thereof, by the Buyer or its customers, and provided Buyer shall have made all payments then due hereunder, and shall give Xymox immediate notice in writing of any such claim and transmit to Xymox immediately upon receipt all processes and papers served upon Buyer and permit Xymox through its counsel, either in the name of Buyer or in the name of Xymox, to defend or settle the same, and shall give all needed information, assistance and authority to enable Xymox to do so. If the process used by Xymox to manufacture the products is held by a final court decision from which no further appeal can be taken, to infringe any valid United States patent, trademark or copyright and the use of such products is on that basis permanently enjoined, or in the event of a settlement or compromise approved by Xymox that precludes further use of such products by Buyer, then: (i) Xymox will pay any final and unappealable award of damages in such suit to the extent directly attributable to such process infringement, and (ii) Xymox shall, at its own expense and at its sole option, either (1) procure for Buyer the right to continue using the products to the extent contemplated herein, (2) replace the products with goods manufactured with noninfringing processes, or (3) refund the undepreciated portion of the purchase price and the transportation costs Buyer paid for the products upon return (at Xymox's option) of such products to Xymox.
 - b. Notwithstanding the foregoing: (i) Xymox shall not be responsible for any compromise or settlement made without its written consent; and (ii) Xymox shall not be responsible for infringements by the products themselves, or for infringements of combination or process patents covering the use of Xymox-furnished products in combination with other goods or materials not furnished by Xymox, or for any claim of contributory infringement resulting from the use or resale by Buyer of products sold hereunder, or for infringements by any of the products Xymox furnishes to Buyer that are manufactured in accordance with drawings, designs, design criteria, or specifications owned, proposed or furnished by Buyer, and Buyer shall indemnify and defend Xymox from and against all such infringements and claims described in this section 11.b(ii). The foregoing section 11.a, as limited by this section 11.b, states the entire liability of Xymox and the exclusive remedy of Buyer for infringement, and in no event shall Xymox be liable for any consequential damages attributable to an infringement.
12. Limitation of Liability; No Consequential Damages. Xymox's liability with respect to the products and/or services sold hereunder shall be limited to the warranty provided in section 9 hereof; Xymox's liability with respect to infringement shall be limited to the remedy set forth in section 11.a hereof as limited by section 11.b hereof; and, with respect to other performance or breach of this Contract, Xymox's liability shall be limited to direct damages not to exceed the Contract price of the product(s) associated with the breach. **XYMOX SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER**

THEORIES OF LAW OR EQUITY, WITH RESPECT TO THIS CONTRACT OR PRODUCTS SOLD OR SERVICES RENDERED BY XYMOX, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. Without limiting the generality of the foregoing, Xymox specifically disclaims any liability for property or personal injury damages, penalties, administrative fees, overhead, special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated goods or equipment, cost of capital, cost of substitute products, facilities or services, down-time, shut-down or slow-down costs, or for any other types of economic loss, or for claims of Buyer's customers or any third party for any such damages, costs or losses. **XYMOX SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONTINGENT DAMAGES WHATSOEVER, EVEN IF XYMOX HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.**

13. Indemnity. Buyer shall defend, indemnify and hold harmless Xymox from and against any and all claims, losses, liabilities, damages and expenses (including, without limitation, attorneys' fees and other costs of defending any action) which Xymox may incur or suffer as a result of (a) any claim by Buyer or any third parties that arises out of or in connection with the products and/or services sold hereunder, or the goods into which those products and/or services have been incorporated, and that is based on defects not proven to have been caused solely by Xymox's negligence, or (b) the negligence or intentional misconduct of Buyer or its employees, agents or customers.
14. Technical Information; Confidentiality. Any sketches, models or samples submitted by Xymox shall remain the property of Xymox, and shall be treated as Xymox's confidential information by Buyer unless Xymox has in writing stated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made by Buyer or others without the express, prior written consent of Xymox. Buyer shall not disclose any of Xymox's confidential information to any third party or use any of it for any purpose other than performing Buyer's duties under the Contract, without the express, prior written consent of Xymox. Buyer shall comply with all applicable laws, rules, orders and regulations relating to data privacy, data security, data protection and confidentiality with respect to all personal information it obtains under or in connection with the Contract.
15. Buyer's Property. Any property of Buyer placed in Xymox's custody for performance of this Contract is not covered by Xymox's insurance, and no risk is assumed by Xymox in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder, or any accident or event beyond the reasonable control of Xymox.
16. Tools. Any dies, jigs, tools, negatives or plates (collectively, "Tools") which Xymox manufactures or acquires for performance of this Contract shall remain the property of Xymox, notwithstanding any charges to Buyer therefor. Tool charges convey to Buyer the right to have the Tools used by Xymox for performance of this Contract, but they do not convey title or right of possession. Xymox shall be responsible for routine maintenance and repair of all Tools, as well as for major overhauls, replacements or changes, but all charges for such work shall be charged to Buyer by separate invoice as such charges are incurred. Unless other specific written arrangements are agreed to by the parties, Tools will be destroyed if they have gone eighteen (18) months without being used.
17. Artwork. Due to special mechanical requirements in the manufacture of the products, all artwork submitted by Buyer is subject to approval by Xymox. If additional charges for retouching and/or rework are necessary, Buyer will be notified and billed therefor at cost.
18. No Copying. Xymox's designs are and shall remain the sole property of Xymox. Buyer agrees not to (a) use, copy, disassemble, decompile or reverse-engineer any of Xymox's designs, or (b) facilitate any third party's efforts to use, copy, disassemble, decompile or reverse-engineer any of Xymox's designs.
19. Waiver; Severability. No waiver by Xymox of any breach of any of the terms or conditions of this Contract shall be valid unless in writing and signed by Xymox, and no such signed written waiver shall be construed as a waiver of any other terms, conditions or breach of the Contract. Any provision hereof that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions.

20. **Exclusive Venue.** Xymox and Buyer hereby consent and agree that any and all disputes arising out of this Contract or its performance or breach or the products or services furnished by Xymox that cannot be resolved through good faith negotiation shall be resolved exclusively through litigation in the state or federal courts sitting in Milwaukee County, Wisconsin, and Xymox and Buyer hereby submit to the personal jurisdiction of such courts.
21. **Governing Provisions.** **THIS CONTRACT AND THESE TERMS AND CONDITIONS OF SALE SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN XYMOX AND BUYER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THERE ARE NO CONDITIONS AFFECTING THIS CONTRACT WHICH ARE NOT EXPRESSED HEREIN. THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL NOT BE GOVERNED BY THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.** References herein to “days” mean calendar days unless otherwise stated.