

## **XICATO TERMS AND CONDITIONS**

These Xicato, Inc. ("Xicato") Terms and Conditions of Sale govern the sale or license of Xicato Products by its sales force and authorized representatives.

### **1. DEFINITIONS**

- a) "Products" are LED modules sold or licensed through Xicato, e.g. modules under the name XIM, XLM, XSM, XTM and XCA. For the avoidance of doubt, accessories such as wire harnesses, optics (e.g. reflectors and lenses) and adapter rings ("Accessories") which may be delivered with the Product shall not be considered Products.
- b) "Customers" means the first integrator of Products with other components or services to make or sell a complete Luminaire to an end user.
- c) "Special Products" are products that have been modified under mutual agreement to meet Customer requested changes, custom installations or custom fixtures and may not appear on Xicato's Price list.
- d) "Specifications" means specific technical information about Xicato Products which is published in Xicato Product manuals and technical data sheets in effect on the date Xicato ships Customer's order.
- e) "Shipment" means availability to ship from Xicato's place of manufacture, distribution location or location otherwise agreed to by Xicato where ownership transfers to Customer.
- f) "Delivery" means standard Xicato shipping to and arrival at the receiving area at the "Ship To" address in the country where Customer's order is placed, unless otherwise indicated on the quotation.

### **2. PRICES**

- a) Customer shall pay Xicato's standard list prices in effect at the applicable delivery date requested in the order in U.S. dollars no later than thirty (30) days following the date of the applicable invoice.
- b) Prices exclude delivery charges, unless otherwise indicated on the quotation, and are valid for the period indicated on the quotation or for the applicable Ordering Period, whichever expires first.
- c) Prices are exclusive of and Customer will pay applicable sales, use, service, value added or like taxes, unless Customer has provided Xicato with an appropriate exemption certificate for the delivery jurisdiction.

### **3. ORDERS**

- a) All orders are subject to acceptance by Xicato. Orders are Non-Cancellable and Non-Refundable. Customer will specify Ship To addresses within the country where the order is placed, unless otherwise agreed. Orders must specify delivery within twelve (12) months from order date, including possible rescheduling, unless otherwise agreed or indicated on the quotation.
- b) Minimum order increments for each part number will be as indicated in the quote provided by Xicato for each order.

### **4. DELIVERY**

Xicato will make commercially reasonable efforts to meet Customer's delivery requirements as dictated by the requested due date on the order. The parties may agree to reschedule delivery; however, orders put on hold more than sixty (60) days beyond the original scheduled delivery date will relieve Xicato of future performance and, in the case of Special Products, may result in a charge to the Customer representing the cost of acquiring any components or services that are unique to these Special Products.

### **5. SHIPMENT AND RISK OF LOSS**

Xicato will ship according to Xicato's standard commercial practice (EXW-Ex Works). Risk of loss and damage will pass to Customer per Incoterms 2010, as applicable. If special packing or shipping instructions are agreed, charges will be billed separately to Customer.

### **6. ACCEPTANCE**

Acceptance of Products by Customer occurs upon Delivery. If Customer issues a claim for wrong shipment (Products, quantity and address) or damaged Products within thirty (30) days from delivery date, Xicato will verify the claim and issue a credit note, if appropriate.

### **7. PAYMENT AND TITLE**

- a) Payment terms are subject to Xicato credit approval. Payment is due net 30 days from Xicato's invoice date, unless otherwise indicated on the quotation.
- b) Xicato may change credit or payment terms at any time when, in Xicato's opinion, Customer's financial condition, previous payment record or the nature of Customer's relationship with Xicato so warrants.
- c) Xicato may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other agreement if, after ten (10) days written notice, the failure has not been cured.
- d) Title to Products will pass upon transfer to "Buyer" according to Incoterms 2010.

### **8. WARRANTY**

a) Xicato warrants only to Customer that each hardware Product will (i) for a period of twelve (12) months from the date of original shipment to Customer, under standard Xicato operating conditions as specified herein and in the relevant Product Datasheets provided at [www.xicato.com/products](http://www.xicato.com/products) ("Product Datasheets"), shall be free from a reproducible defect that results in the failure of the Product to conform to Xicato's specifications as set forth in the relevant Product Datasheet; (ii) for a period of five (5) years from the date of original shipment to Customer be substantially free from Defects in materials and workmanship that result in a catastrophic "no light" condition of the Product and (iii) for a period of five (5) years from the date of original shipment to Customer, under standard Xicato operating conditions as specified herein and in the relevant Product Datasheets, the Product shall be free of a reproducible defect that results in the failure of the Product to conform to the following specifications: (a) flux output >70% as compared to the Product's performance as of the date of manufacture; and (b) color consistency between Products in a single contiguous visual space viewable from any location within that space

that differs less than 3 points in u',v'. Xicato also warrants only to Customer that any Accessories shall be substantially free from defects in materials and workmanship for a period of ninety (90) days from the date of original shipment to Customer.

b) Subject to Customer's compliance with Xicato's return material authorization (RMA) policy then in effect, Products obtained from Xicato that do not comply with the applicable warranty provisions and that are returned to Xicato during the applicable warranty period will be repaired or replaced at Xicato's option. However, if Xicato determines that it is not practical to repair or replace the returned Product, Xicato shall, as Customer's sole and exclusive remedy, refund to Customer (or credited against other Customer obligations at Xicato's option) an amount equal to the price paid by Customer for such Product if within one year of delivery, or the Product's net book value thereafter. New replaced or repaired Products shall be warranted for the same flux degradation and color consistency performance as the original warranty, but only until completion of the original underlying warranty period. Replacement shall not result in a new warranty period, nor shall the original terms of this warranty be extended. Xicato will deliver a Product that meets the original form factor and mechanical/optical interfaces provided that Xicato has the exclusive right to change the electrical characteristics of that Product as long as it is compatible with the existing driver.

c) Each returned Product must include all documentation and the complete luminaire which shall be unaltered, unassembled and intact from its installed condition. Access to the original installation may be required by Xicato to confirm compliance with the terms of this Agreement. Customer will prepay shipping charges for such Products returned for warranty service. For valid warranty claims, Xicato will reimburse Customer for the cost of freight and insurance for return of Product from the Customer to Xicato and be responsible for return shipping charges from Xicato to Customer. In the event Xicato reasonably determines that a returned Product complies with the warranties set forth above (NFF), Xicato reserves the right to charge Customer a NFF fee at its then current time and materials rates.

d) The above warranty does not extend to

1) Product failure or defect that results from or in connection with the design, installation, use or failure of any equipment of system that is not provided by Xicato or to any other cause that, in Xicato's reasonable determination, is not in Xicato's control.

2) Products where the operational temperature exceeds the specified case temperature (Tc)

3) Label, serial number, temperature indication sticker or any other marking has been altered, removed or made illegible.

4) Any improper installation (or errors committed during installation), movement or application of the Products.

5) Product that has been manipulated, altered, opened or tampered with. Product or Luminaire shows evidence of or has been subjected to misuse, abuse, neglect, intentional misconduct, accidents or events of force majeure.

6) Any repair or modification of the Product other than by Xicato.

7) Product is operated outside of desired specifications, either continuously or temporarily including any error resulting from any power surge, lighting damage, fire, accidental breakage, damage caused by wind, hail, storms, pest, animals or people, or any other events or causes outside of Xicato's reasonable control.

8) Direct exposure to standing water or liquids.

e) EXCEPT AS SET FORTH IN WRITING IN THIS SECTION 8, THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY XICATO IN CONNECTION WITH THE PRODUCTS AND THE AGREEMENT AND XICATO DISCLAIMS ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS. XICATO DOES NOT WARRANT THAT THE PRODUCTS WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS. NO OTHER PARTY SHALL NOT MAKE ANY WARRANTIES ON XICATO'S BEHALF THAT EXCEED THE WARRANTIES AS STATED HEREIN.

f) All warranty claims should be submitted to Xicato in writing as follows:

Attention: Warranty Claims

Xicato, Inc.

101 Daggett Drive

San Jose, California 95134 U.S.A.

## 9. LICENSES

a) Customer may transfer embedded software ("Software") only upon transfer of the associated Product. All license terms will be binding on transferees, notice of which is hereby given. Customer's license will automatically terminate upon any transfer.

b) The Software is owned and copyrighted by Xicato or by third party suppliers. Customer's license confers no title or ownership and is not a sale of any rights in the Software, its documentation, or the media on which they are recorded or printed. Third party suppliers may protect their rights in the software in the event of any infringement.

c) Customer will not disassemble, decompile or reverse engineer the Software, or the Products themselves, without Xicato's prior written consent. Where Customer has other rights under statute, Customer will provide Xicato with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software.

d) The following terms will apply to Licenses of Software directly or indirectly to the U.S. Government. In this section and only this section, the term "Customer" means Xicato's direct purchaser, any entity sublicensing the Software, and the end-user.

1) In the event the Software is transferred directly or indirectly to the U.S. Government, the Customer agrees that it has only those rights provided for such Software by Xicato's standard commercial license terms, or if specifically incorporated in the applicable purchase order of contract under which the Software is to be provided, those rights provided for "Restricted Computer software" under FAR 52.227-19 (June 1987) and 52.227-14, if applicable.

2) The Customer further agrees that Software, and any derivatives or modifications, is adequately marked for purposes of FAR 52.227-14, Rights in Data-General, if applicable, when the following legend is affixed to the Software, or otherwise contained in the contract between Customer and Xicato under which the Software is to be provided:

### RESTRICTED RIGHTS NOTICE

Use, duplication or disclosure is subject to Xicato's standard commercial license terms, and for non-DOD U.S. Government Customers, the restriction as set forth in FAR 52.227-19(c)(1-2)(June 1987);

Xicato, Inc., 101 Daggett Drive, San Jose, CA 95134 U.S.A., Copyright (c) Xicato.

All Rights Reserved

## 10. INTELLECTUAL PROPERTY RIGHTS

- a) Xicato shall defend Customer and its officers, directors, agents and employees from claims by a third party arising from infringement by the Product of any valid patent or copyright issued as of the date of this Agreement, provided Xicato is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise. Xicato will not be responsible for any settlement it does not approve in writing.
- b) The foregoing obligation of Xicato does not apply with respect to Product or portions or components thereof (i) that are not supplied by Xicato, (ii) that are made in whole or in part in accordance to Customer's specifications, (iii) that are modified after shipment by Xicato, if the alleged infringement relates to such modification, (iv) that are combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (vi) where Customer's use of the Product is incident to an infringement not resulting primarily from the Product and its intended application or (vii) where Customer's use is not strictly in accordance with this Agreement.

## 11. LIMITATION OF REMEDIES AND LIABILITY

- a) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products purchased by Customer are used for these applications. Customer will indemnify and hold Xicato harmless from all loss, damage, expense or liability in connection with such use.
- b) To the extent that Xicato is held legally liable to Customer, Xicato's liability is limited to:
  - 1) payments described in Section 8 and 10 above;
  - 2) damages for bodily injury;
  - 3) direct damages to tangible property up to the lesser of the total amount of fees paid under this Agreement or payments made by Customer to Xicato over the twelve-month rolling period prior to the cause of action (the "Liability Limit");
  - 4) other direct damages for any claim based on a material breach of these Terms and Conditions of Sale, up to the Liability Limit.
- c) NOTWITHSTANDING SECTION 11(B) ABOVE AND REGARDLESS OF WHETHER THE CLAIM FOR DAMAGES IS BASED IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, IN NO EVENT WILL XICATO OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING:
  - 1) ACTUAL LOSS OR DIRECT DAMAGE THAT IS NOT LISTED IN 11(B) ABOVE;
  - 2) DAMAGES RELATING TO CUSTOMER'S PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES (I.E., "COST OF COVER"); OR
  - 3) INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING ANY DAMAGES RELATED TO DOWNTIME COSTS OR LOST PROFITS, BUT EXCLUDING PAYMENTS DESCRIBED IN SECTION 10 ABOVE AND DAMAGES FOR BODILY INJURY
- d) Xicato and Customer acknowledge that the fees stated herein are based on an agreed upon allocation of risk and Xicato and Customer would not enter into this Agreement without the above limitations.

## 12. GENERAL

- a) Transactions may be conducted through Electronic Data Interchange ("EDI") or other electronic methods, as agreed.
- b) Xicato will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- c) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- d) Customer may not assign any rights or obligations, by operation of law or otherwise, without prior written consent of Xicato. Unless expressly provided, no provisions of this Agreement are intended or will be construed to confer upon any person other than Xicato any rights, remedies or other benefits of this Agreement.
- e) Under no circumstances will Xicato provide cost data.
- f) Customer will provide VAT-ID numbers to support VAT exemptions of intra-community supplies where appropriate as governed by national and European legislation and Customer will notify Xicato immediately if the VAT-ID number provided becomes invalid or is changed or amended in any way. Xicato may have to retrospectively charge VAT in the event that VAT has been incorrectly exempted due to Customer failure to notify Xicato of the invalidation or change of VAT-ID number.
- g) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with all applicable laws and regulations, and for obtaining required export and import authorizations. Xicato may suspend performance if Customer is in violation of any applicable regulations. Customer will defend, indemnify and hold harmless Xicato from any violation of such laws and regulations.
- h) Disputes arising in connection with these Xicato Terms and Conditions of Sale will be governed by the laws of California, USA without giving effect to any choice of law principles that would result in the application of any different law.
- i) Customer and Xicato expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement or to transactions processed under this Agreement
- j) These Xicato Terms and Conditions of Sale constitute the entire agreement between Xicato and Customer, and supersede any previous communications, representations or agreement between the parties, whether oral or written, regarding transactions hereunder, including Customer's additional or different terms and conditions, express or implied. Customer's purchase or license of Products will constitute Customer's acceptance of Xicato Terms and Conditions of Sale, which may not be changed except by an amendment signed by an authorized representative of each party.