

BIRD TECHNOLOGIES GROUP, INC.
TERMS AND CONDITIONS OF SALE

Bird Technologies Group, Inc., a Delaware corporation (“Bird”), including its U.S. subsidiaries and X-Com Systems, LLC (collectively referred to herein as “Seller”) agrees to sell specific goods, products, components, equipment and/or services (collectively referred to herein as the “Products”) to Seller’s customer (“Buyer”) pursuant to and subject to Seller’s Terms and Conditions of Sale as set forth herein (“Sale Terms”).

1. ACCEPTANCE; CONTRACT FORMATION.

This transaction, including Seller’s sale of Products to Buyer, is expressly limited to and made conditional upon Buyer’s assent to and acceptance of these Sale Terms and the terms and conditions set forth in any related Seller document, including, without limitation, any Seller issued quotation, proposal, acknowledgment and/or Invoice (collectively referred to hereinafter as the “Seller Documents”). These Sale Terms shall apply to and govern all Seller Documents, including any agreement, order and/or sale that may result herefrom, and these Sale Terms, along with the Seller Documents, constitutes the entire agreement between Buyer and Seller. Any of Buyer’s terms contained in any request for quotation, purchase order, release, acknowledgement or any other Buyer document which are in addition to or different from these Sale Terms or the terms contained in any Seller Documents are hereby specifically objected to, rejected and excluded, and shall be of no force or effect. All Buyer purchase orders and/or releases received by Seller are subject to written acknowledgement by Seller on Seller’s acknowledgment form.

2. PRICES. All Product prices quoted by Seller to Buyer are intended for prompt acceptance by the Buyer and are subject to change at any time and from time to time without notice to Buyer. All Product prices quoted by Seller to Buyer are INCOTERMS EXW Seller’s facility in the U.S.A., unless other delivery terms are specified in Seller’s Documents and are exclusive of transportation, installation, service and insurance charges. In addition, Product prices as quoted by Seller to Buyer do not include any present or future sales, use, excise or other taxes or duties imposed upon the sale of the Products by any governmental and/or taxing authority. All such taxes (other than income taxes payable by Seller as a result of Seller’s business operations) are the sole and exclusive responsibility of the Buyer and any tax or taxes will be added to the Seller’s Invoice as a separate charge to be paid by the Buyer.

3. PAYMENT TERMS. For customers with pre-approved credit from Bird’s Credit Department, payment terms are cash net thirty (30) days and except as otherwise agreed in writing between the

parties, Buyer shall pay all Seller issued invoices within thirty (30) days of the date of Seller’s issuance of each such invoice. In the event that payment is not made within thirty (30) days, then Seller may charge Buyer a late fee in the amount of one and one-half percent (1.5%) from and after the due date on all past due amounts for each month in which payment is delayed or, if lower, the maximum amount permitted by law. In addition, in the event of late payment, Seller may, at Seller’s sole discretion, withhold further deliveries, suspend further performance, demand cash payments in advance or security satisfactory to the Seller or terminate any contract between Seller and Buyer in total, and the Buyer shall be liable for any and all costs incurred by the Seller including, but not limited to, attorney’s fees and collection agency fees. Credit Cards are accepted and subject to a “Surcharge Credit Card Amount”.

4. PAYMENT DISPUTE AND OTHER NOTICES. ALL DISPUTES AS TO THE AMOUNT(S) OWED HEREUNDER AND ALL OTHER NOTICES REQUIRED FROM BUYER TO SELLER HEREUNDER SHALL BE MADE, IN WRITING, TO: BIRD TECHNOLOGIES GROUP, INC., 30303 AURORA ROAD, SOLON, OHIO 44139, ATTENTION: CFO. SELLER’S ACCEPTANCE OF ANY PARTIAL PAYMENT WILL NOT ACT AS DISCHARGE OF THE REMAINING BALANCE DUE FROM BUYER TO SELLER HEREUNDER.

5. DELIVERY. Delivery dates given by Seller to Buyer are approximate and delivery shall be subject to, and contingent upon, strikes, labor difficulties, riot, civil unrest, war, fire, delay or defaults of common carriers, failure or curtailment in Seller’s usual sources of supply, governmental decrees or orders, or, without limiting the foregoing, any other delays beyond Seller’s reasonable control and Seller shall not be liable for any loss or damage arising therefrom. Seller shall have the additional right, in the event of the occurrence of any of the above contingencies, at Seller’s option, to cancel any order without any resulting liability. Seller shall not be liable to Buyer or any third-party for any losses or damages, including, without limitation, consequential and/or special damages, arising from

delayed delivery or failure of delivery. Any delivery not in dispute shall be paid for by Buyer in full, regardless of other controversies relating to other delivered or undelivered Products.

6. RISK OF LOSS/TRANSFER OF TITLE.

Unless otherwise agreed in writing signed by both parties, all Products will be shipped FOB Seller's facility in Solon, Ohio, U.S.A., and title to and risk of loss of the Products shall transfer upon delivery to the carrier.

7. CONDITIONS. All purchase orders, releases and/or contracts are accepted with the understanding that they are subject to Seller's ability to obtain the necessary raw materials, and all purchase orders, releases and/or contracts, as well as shipments applicable thereto, are subject to Seller's current manufacturing schedules and government regulations, orders, directives, and restrictions that may be in effect from time to time. Products furnished by Seller are to be within the limits and the sizes published by Seller and subject to Seller's standard tolerances for variations. If the Products are not "whole goods", then Buyer acknowledges and agrees that it will use the Products only for incorporation into a finished good and not for resale.

8. DESIGN CHANGES. Seller expressly reserves the right, without prior notice to Buyer, to make changes, modifications and revisions with regard to the design of Products and/or packaging. In the event that any such design changes, modifications and/or revisions result in an increase of the price of the Products as reflected in Seller's Documents, then the parties will mutually cooperate to discuss such price increases.

9. NONCONFORMITY; RETURN OF PRODUCTS. All Products sold by Seller to Buyer are to be inspected by Buyer upon receipt and should any of such Products fail to meet the written specifications contained in Seller's Documents or otherwise agreed in writing between Seller and Buyer (the "Specifications"), then Buyer shall not return the same, but shall notify Seller, stating full particulars in support of Buyer's claim. Seller will, at Seller's sole option and discretion, either repair or replace nonconforming Products upon their return to Seller or refund the purchase price of such Products. Claims for Products failing to conform to applicable Specifications, or claims for shortages, delays, or failures in shipment or delivery, or for any other cause shall be deemed waived and released by Buyer unless made in writing within forty-eight (48) hours of Buyer's receipt of the Products. In no circumstance

or instance are Products to be returned to Seller without first obtaining Seller's written permission therefor. Notwithstanding anything to the contrary set forth herein or otherwise set forth in Seller's Documents, Products built to order are not subject to return for credit under any circumstances.

10. CANCELLATION. Any purchase order and/or release, once placed with and accepted by Seller via Seller's acknowledgment to Buyer by issuance of a written acknowledgment to Buyer, may not be cancelled by Buyer except upon Seller's written consent and upon terms satisfactory to Seller, including, without limitation, Buyer's indemnification of Seller against loss resulting and/or arising from such cancellation.

11. WARRANTY. Except as otherwise specified in writing from Seller to Buyer, Seller warrants that for a period of one (1) year from the date of Buyer's receipt of the Products: (a) the Products will be free of defects in material and workmanship; (b) the Products will conform to the Specifications contained in Seller's Documents; and (b) Seller will convey good title to the Products free from any valid security interest, lien, or other encumbrances unknown to Buyer. EXCEPT AS SPECIFICALLY STATED IN THIS SECTION 11, THE SALE SHALL BE "AS-IS" AND THE SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES AS TO NON-INFRINGEMENT, MERCHANTABILITY, FITNESS OF THE PRODUCTS FOR ANY PARTICULAR USE OR PURPOSE OR THAT THE DESIGN OF THE PRODUCTS OR ANY SERVICES PROVIDED THEREWITH WILL MEET YOUR REQUIREMENTS, OR ANY WARRANTY BASED ON A COURSE OF CONDUCT OR TRADE USAGE IN CONNECTION WITH SELLER'S PERFORMANCE HEREUNDER. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE, DIRECTLY OR INDIRECTLY, ARISING FROM BUYER'S USE OF THE PRODUCTS OR FOR CONSEQUENTIAL DAMAGES. SELLER'S WARRANTIES AS SET FORTH HEREIN APPLY TO AND EXTEND ONLY TO THE INITIAL SALE OF THE PRODUCTS TO BUYER, AND SHALL NOT EXTEND TO ANY SUBSEQUENT SALE OF THE PRODUCTS, OR TO ANY THIRD-PARTY.

12. LIMITATION OF LIABILITY. SELLER'S SOLE AND EXCLUSIVE LIABILITY FOR ITS PRODUCTS AND BUYER'S SOLE REMEDY AND EXCLUSIVE REMEDY HEREUNDER

(WHETHER UNDER THE THEORY OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR DOCTRINE), SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF PRODUCTS DETERMINED BY SELLER TO BE DEFECTIVE OR AT SELLER'S OPTION AND DISCRETION, TO REFUNDING THE PURCHASE PRICE OF SUCH PRODUCTS IN ACCORDANCE WITH SECTION 9 (NONCONFORMITY; RETURN OF PRODUCTS) HEREIN ABOVE.

13. DISCLAIMER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH ANY SALE OF PRODUCTS TO BUYER, INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HERewith. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

14. CONFIDENTIALITY; PROHIBITED USES. The Products sold to Buyer may incorporate technology, proprietary information and/or trade secrets of Seller. All specifications (including the Specifications), illustrations, drawings, data and other information provided by Seller to Buyer in connection with or related to the Products ("Information") are the property of Seller. Buyer shall maintain and protect the confidentiality of any such Information and Buyer shall not copy, reproduce and/or disclose Information to third-parties without the prior written consent of Seller. Absent written permission from Seller, Buyer shall not use any of Seller's trademarks, trade names and/or logos (collectively "Seller's Marks") in combination with any other trademark, word, symbol, letter or design, or as part of Buyer's company name or in connection with any product other than the Products sold to Buyer hereunder. Buyer shall not adopt or use any trademark, trade name, design, logo or symbol which, in Seller's reasonable opinion, is similar to or likely to be confused with any of Seller's Marks. Buyer will not

knowingly do or permit to be done any action or thing which will in any way impair Seller's rights in and to Seller's Marks.

15. PATENTS. Seller makes no warranty that the Products or method or process of using the Products are free from claims by third-parties that the Products or method or process of using the Products infringe upon the patents or other intellectual property rights of third-parties. Buyer, by its acceptance of the Products agrees that there is no indemnification by the Seller of any claims of patent infringement, regardless of any rights under the Uniform Commercial Code or any other law or regulation, and any such rights are hereby waived. Seller has no obligation to defend or pay damages, settlements, attorney's fees or any other ancillary damages from such a claim of patent infringement brought against Buyer. In addition to any and all other remedies afforded to Seller, Buyer shall indemnify and hold Seller harmless from, and release and not make claim or suit against Seller because of any suits, claims, losses or other liability made against, or suffered by Buyer arising from any claim of, or infringement of, patent, copyright, trademark, or other proprietary right, at common law, or claim of unfair trade or unfair competition, resulting from, or occasioned by, Buyer's use of the Products.

16. EXPORT RESTRICTIONS. Buyer acknowledges and agrees that "technical data" as defined by the U.S. Export Administration Regulations (EAR), International Traffic in Arms Regulations (ITAR) or locally applicable export control laws or regulations, may only be transferred to U.S. Persons (defined in Part 120 of the ITAR and various parts of the EAR) unless prior authorization is granted by the U.S. Department of Commerce or the U.S. Department of State. Buyer hereby covenants and agrees not to export or re-export, directly or indirectly, any Product containing technical data, including any goods, process or services derived from such technical data, to any destination to which such export or re-export is restricted or prohibited by U.S. or locally applicable law or regulations, without first obtaining, at Buyer's own expense, all prior authorizations, licenses, clearances and permits from the U.S. Department of Commerce, the U.S. Department of State and/or other applicable government authorities to the extent required by those laws or regulations.

17. GOVERNING LAW; SEVERABILITY. Any and all disputes arising from or in connection with the buy-sell relationship between Seller and Buyer, including, but not limited to, these Sale Terms,

Seller's Documents, Seller's sale of Products to Buyer and/or Buyer's possession and use of the Products, shall be construed in accordance with and governed by the laws of the State of Ohio, U.S.A., including all matters of construction, validity and performance, without giving effect to the conflict of laws provisions of such State. Seller and Buyer acknowledge and agree that neither the United Nations Convention on Contracts of the International Sale of Goods nor any provision thereof shall govern this any aspect of the buy-sell relationship between Seller and Buyer and/or any obligation hereunder. Any provision hereof which may be prohibited by applicable law shall be ineffective to the extent of such prohibition and without invalidating the remaining provisions hereof.

18. DISPUTE RESOLUTION. Any dispute arising between Buyer and Seller in connection with the buy-sell relationship between Seller and Buyer, including, but not limited to, these Sale Terms, Seller's Documents, Seller's sale of Products to Buyer and/or Buyer's possession and use of the Products, will be resolved exclusively by arbitration in Cleveland, Ohio, and in accordance with the rules of the American Arbitration Association, and the award of the arbitrators shall be final and binding upon the parties. In the event the demand for arbitration is filed pursuant hereto, the party shall have the same rights to discovery under the Ohio Rules of Civil Procedure as if the dispute had been filed in an original action in an Ohio court of original jurisdiction, and any court located in Cleveland, Ohio, shall have jurisdiction and shall be authorized to order injunctive relief and to enforce said rights as if the entire dispute were pending before said court.

19. WAIVER. No waiver by Seller of any of the terms and conditions contained herein or any modification of these Sale Terms shall be effective unless made in writing and signed by an authorized representative of Seller. Any failure of Seller to enforce at any time, or for any period of time, any of the terms and conditions contained herein shall not constitute a waiver of these Sale Terms nor of Seller's right to enforce each and every provision hereof.

20. SET OFF. Seller shall be entitled at all times to set off or deduct any amount owing, for any reason, at any time, from Seller (including Seller's affiliates and subsidiaries), to Buyer against any amount payable at any time by Buyer to Seller.

21. RESERVATION OF RIGHTS. Seller expressly reserves all rights and remedies which are available to it at law or in equity, including, but not

limited to, the rights and remedies set forth in the Uniform Commercial Code as in effect in the State of Ohio from time to time.

22. ENTIRE AGREEMENT AND MODIFICATION. Upon the Seller's acceptance of the Buyer's order, these Sale Terms and the terms set forth in Seller's Documents shall constitute the entire agreement between the Buyer and the Seller and no statement, correspondence, or other terms shall modify or affect the terms hereof or thereof. No change in or modification of these Sale Terms will be valid unless approved by the Seller in writing. These Sale Terms govern and control any buy-sell transaction between the Seller and the Buyer notwithstanding the Seller's use of Buyer's purchase order number as an accommodation to the Buyer.

23. DELAYS IN SHIPMENT REQUESTED BY BUYER. Once a firm shipment date has been confirmed by the Seller to the Buyer such date cannot be changed to a later date by the Buyer without penalty. If such a situation occurs a penalty equal to 2% of the value of order will be charged to the Buyer by the Seller if the date is moved beyond the Calendar Quarter date. An additional 10% penalty will be incurred if the date is moved beyond the end of the Calendar Year (i.e., December 31, xxxx) into the succeeding Calendar Year.

24. CANCELLED ORDER PENALTIES. Once a firm shipment date has been confirmed by the Seller to the Buyer the Buyer's Purchase Order cannot be cancelled without penalty. If such situation were to occur, the following penalty will apply and be charged to the Buyer by the Seller:

- Standard product: cancellation penalty equal to 50% of the PO's total value;
- Custom product: cancellation penalty equal to 100% of the PO's total value.