

AIXTRON, INC. – Quality Assurance Procedure (QAP)				Trade Secret
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**AIXTRON, INC.
TERMS AND CONDITIONS OF PURCHASE**

PURCHASE ORDER TERMS AND CONDITIONS

1. ENTIRE AGREEMENT

- 1.1 The terms and conditions set forth below together with those appearing on the face of this purchase order or on any attachments hereto (collectively the "Order") constitute the complete and exclusive agreement between AIXTRON, Inc. ("AIXTRON, Inc.") and the seller identified on the face of this Order ("Seller") with respect to the subject matter of this Order. All references in this Order to AIXTRON, Inc. shall mean only the AIXTRON, Inc. entity issuing this Order.
- 1.2 This Order takes precedence over any additional, inconsistent or different terms and conditions contained in any acknowledgment, invoice or other communication of Seller, which are hereby deemed material alteration and rejected and to which an express objection is hereby made by AIXTRON, Inc. No such different, inconsistent or additional terms and no modification, alteration or amendment of this Order shall be binding on either party unless in writing and signed by authorized representative of each party. To the extent this Order might be treated as an acceptance of Seller's prior offer, such acceptance is expressly made conditional on assent by Seller to the terms hereof and shipment of Goods or beginning performance of Services by Seller shall constitute such assent.

2. PRICES AND INVOICES

- 2.1 Seller shall sell to AIXTRON, Inc. the goods ("Goods") or perform services ("Services") shown on the face of this Order at the prices specified on the face of the Order. Except as otherwise provided in this Order, such prices are exclusive of applicable freight charges and duties. Seller warrants that such prices are not in excess of the lowest prices charged by Seller to other similarly situated customers for similar quantities of goods or services of like kind and quality.
- 2.2 Payment for Goods or Services by AIXTRON, Inc. shall be subject to the acceptance by AIXTRON, Inc. and shall be due no earlier than forty-five after the later of
- (i) receipt by AIXTRON, Inc. of an appropriate invoice from Seller, or
 - (ii) acceptance by AIXTRON, Inc. of the corresponding Goods or Services.

AIXTRON, Inc. may deduct from Seller's invoices any monies owed to AIXTRON, Inc. by Seller.

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- 2.3 All quantities listed in this Order are only estimates and may be revised by AIXTRON, Inc. if its requirements change.
- 2.4 Seller shall keep adequate records of payable hours of direct labor and all costs of the performance of this Order, which shall be subject to audit by AIXTRON, Inc. in the event of termination, other equitable adjustment, or with respect to any Order for which price is based on time and cost of material.
 - 2.5 All costs of insurance, packaging, storage and transportation shall be the sole responsibility of Seller.
 - 2.6 Seller shall assume and pay all applicable taxes, fees, assessments, tariffs, duties and other charges required by law due to the sale of Goods or performance of Services, all of which shall be separately itemized on Seller's invoice.

3. SHIPMENT AND DELIVERY

- 3.1 Time for Seller's performance is of the essence under this Order. Seller shall immediately give AIXTRON, Inc. notice of any prospective failure to ship all or any part of Goods or provide Services in time to meet the date on which such Goods or Services must be received by AIXTRON, Inc. (the "Delivery Date"), whereupon AIXTRON, Inc. shall have the option to cancel all or any part of this Order without obligation to Seller other than notice and without prejudice to any other rights or remedies of AIXTRON, Inc. under this Order or at law. If only a portion of Goods is available for shipment to meet the Delivery Date, Seller shall ship the available Goods unless directed by AIXTRON, Inc. to reschedule shipment. To the extent Seller is performing Services under this Order, AIXTRON, Inc. may terminate this Order at any time, without cause, upon 10 days notice to Seller; in such event, AIXTRON, Inc. sole obligation to Seller shall be to pay for the Services completed up to the date of termination.
- 3.2 If Seller's failure to timely ship Goods by the specified method of transportation would not permit Seller to meet the Delivery Date, the Goods affected shall be shipped by air transportation or other expedient means acceptable to AIXTRON, Inc. Seller shall pay for any resulting increase in the cost of freight incurred over that which would have been incurred by the specified method of transportation.
- 3.3 If Seller makes any shipment more than three work days prior to the date required to meet the Delivery Date by the specified method of transportation, AIXTRON, Inc. may at its discretion either reject and return the Goods or delay processing the corresponding invoice until the Delivery Date.
- 3.4 All Non-conforming Products (as defined in section 6.1 below), over shipments, and early shipments returned by AIXTRON, Inc. to Seller, and all replacement or reworked products shipped by Seller to AIXTRON, Inc. to replace Nonconforming Products, shall

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be at Seller's risk and expense, including transportation charges (including round trip charges for replacement or reworked Goods).

- 3.5 Unless otherwise specified in this Order, shipments of Goods shall be F.O.B. DDP Sunnyvale, CA. Title and risk of loss or damage shall pass from Seller to AIXTRON, Inc. upon acceptance by AIXTRON, Inc.
- 3.6 Seller shall preserve, package, handle and pack the Goods so as to protect the Goods from loss or damage, in conformance with good commercial practice, AIXTRON, Inc. specifications, government regulations, and other applicable requirements. Seller shall be responsible for any loss or damage due to its failure to properly preserve, package, handle, or pack the Goods; AIXTRON, Inc. shall not be required to assert any claims for such loss and damage against the common carrier involved.
- 3.7 All Goods shall be shipped in conformance with government or freight regulations applicable to chemicals. AIXTRON, Inc. shall not be liable for any loss or damage caused by a release of chemicals or other hazardous materials to the environment prior to AIXTRON, Inc.'s actual receipt of the corresponding Goods.
- 3.8 Each delivery of Goods to AIXTRON, Inc. shall include a packing list which contains at least (i) this Order number, (ii) the AIXTRON, Inc. part number, (iii) the quantity shipped and (iv) the date of shipment. Unless otherwise specified in this Order, Seller shall be responsible for safe and adequate packing which shall conform to the requirements of carriers' tariffs. Seller shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices. An itemized packing slip bearing this Order number must be placed in each container. No extra charge shall be made for packaging or packing materials unless authority therefore is set forth in this Order.
- 3.9 Neither party shall be liable for any delays in performance or failure to perform caused by circumstances beyond its reasonable control including acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes or embargoes. When any such contingency is delaying or threatening to delay the performance of this Order, Seller shall immediately give notice thereof to AIXTRON, Inc. and AIXTRON, Inc. may either (i) extend Seller's time for performance or (ii) terminate the uncompleted portion of the Order at no cost to AIXTRON, Inc.

4. CHANGES

- 4.1 AIXTRON, Inc. may without charge change or cancel any portion of this Order if AIXTRON, Inc. gives Seller notice (i) for Custom Goods or Services (i. e., goods or services supplied exclusively in accordance with AIXTRON, Inc. designs or specifications), at least twenty calendar days prior to the Delivery Date, and (ii) for standard Goods and Services (i. e., all Goods and Services other than Custom Goods and Services), at least ten calendar days prior to the Delivery Date.

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- 4.2 AIXTRON, Inc. may, effective upon notice to Seller, change AIXTRON, Inc. designs or specifications at any time prior to shipment of corresponding Goods or receipt of corresponding Services. If any such change directly affects the prices or delivery schedules of Goods or Services, an equitable adjustment shall be made provided that Seller makes a written claim for an adjustment prior to shipment of the Goods or provision of the Services. If the parties are unable to agree upon the amount of the adjustment, acting reasonably and in good faith, AIXTRON, Inc. may without any liability terminate this Order as to all Goods and Services affected.
- 4.3 Seller shall not, without the prior written consent of AIXTRON, Inc., make any process or design changes affecting the Goods.

5. QUALITY AND WARRANTY

- 5.1 Seller shall maintain an objective quality program for all Goods and Services in accordance with (i) the current revision of AIXTRON, Inc. Supplier Quality Systems Requirements and (ii) any additional or substitute quality requirements listed in this Order or otherwise specified by AIXTRON, Inc. Seller shall, upon AIXTRON, Inc. request, provide to AIXTRON, Inc. copies of Seller's program and supporting test documentation.
- 5.2 Seller warrants that (a) all Goods shall (i) be new and will not be used or refurbished, (ii) conform strictly to the design criteria, specifications, (including general specifications and quality requirements), descriptions, drawings, samples, and other requirements referred to in this Order, provided by Seller, or agreed to by the parties, (iii) be free from defects in design, material and workmanship, (iv) comply with all applicable federal, state and local laws, codes, regulations and the rules of the country of origin and the country of destination (provided that in the event of conflicting requirements, the more stringent requirement shall apply), and (v) be free of all liens, encumbrances, security interests, and other claims against title, and (b) all Services shall be performed by qualified and competent personnel in accordance with the highest generally accepted professional and technical standards, in an expeditious and efficient manner consistent with sound professional practices.
- 5.3 **Inspection/Rejection; Acceptance:** (a) All items, including without limitation raw materials, components, services, intermediate assemblies, end products and data, shall be subject to inspection and test by AIXTRON, Inc. and/or its customer to the extent practicable at all times and places at AIXTRON, Inc.'s discretion, including the period of manufacture, and in any event prior to final acceptance. (b) If any items are defective in material or workmanship or otherwise not in conformity with the requirements of this Order, AIXTRON, Inc. shall have the right either to reject them, with or without instructions as to their disposition, or to require their correction or to require their replacement. Items which have been rejected or required to be corrected shall be removed or, if permitted or required by AIXTRON, Inc., corrected by and at the expense of Seller promptly after notice, and shall not thereafter be tendered for acceptance

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unless the former rejection or requirement of correction is disclosed. If Seller fails to remove promptly such items which are required to be removed or promptly to replace or correct such items which are required by AIXTRON, Inc. to be replaced or corrected, AIXTRON, Inc. either (1) may remove, replace or correct (as applicable) such items and charge to Seller the cost incurred by AIXTRON, Inc. thereby; or (2) may cancel this Order; or (3) may accept such items and pay for such items at a reduced price which is equitable under the circumstances. (c) If any inspection or test is made by AIXTRON, Inc. Buyer and/or its customer on the premises of Seller or a tier subcontractor, Seller without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of AIXTRON, Inc. and/or customer inspectors in the performance of their duties. AIXTRON, Inc. reserves the right to charge to Seller any additional cost of inspection and test when items are not ready at the time such inspection and test is requested by Seller or when re-inspection or retest is necessitated by prior rejection. Failure to inspect or accept or reject items shall neither relieve Seller from responsibility for such items that are not in accordance with the requirements of this Order nor impose liability on AIXTRON, Inc. therefore. (d) Seller shall provide and maintain an inspection system acceptable to AIXTRON, Inc. covering the items hereunder. Records of all inspection work by Seller shall be kept complete and available to AIXTRON, Inc. and/or its customer during performance of this Order and for such longer period as may be specified elsewhere in this Order. (e) Unless otherwise provided herein, final inspection and acceptance shall be after delivery to Buyer's facility. No item shall be deemed accepted by AIXTRON, Inc. until AIXTRON, Inc. has given written notice of such acceptance to Seller. Payment for items ordered hereunder shall not constitute acceptance. (f) The inspection and test by AIXTRON, Inc. or its customer of any items does not relieve the Seller from any responsibility regarding defects or other failures to meet Order requirements or other nonconformance with the warranties set forth in Section 5.2 which may be discovered after final acceptance.

5.4 Seller will not subcontract the furnishing of any of the items required by this Order or performance of any Services, without the prior written approval of AIXTRON, Inc.

6. NONCONFORMING PRODUCTS

6.1 (a) If any Good is defective or otherwise not in conformity with the requirements of this Order, including the warranties set forth in Section 5.2 ("Nonconforming Product"), AIXTRON, Inc. may at its option (i) return the Nonconforming Product for replacement or reworking at Seller's expense, or (ii) repair the Nonconforming Product and get from Seller a reimbursement of AIXTRON, Inc.'s reasonable expenses of repair. (b) If any Service is not in conformity with the requirements of this Order, including the warranties set forth in Section 5.2 ("Nonconforming Service"), AIXTRON, Inc. may at its option (i) allow Seller to re-perform the Nonconforming Service at Seller's expense, or (ii) procure a similar service from a third party and get from Seller a reimbursement of AIXTRON, Inc.'s reasonable expense incurred in connection therewith.

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- 6.2 Seller shall, (A) if AIXTRON, Inc. selects the alternative in paragraph 6.1(a)(i) above, return the replacement or reworked Goods no later than five work days after receipt of the Nonconforming Product from AIXTRON, Inc., and (B) if AIXTRON, Inc. selects the alternative in paragraph 6.1(b)(i) above, re-perform the affected Service no later than five work days after AIXTRON, Inc.'s request. The cure period specified in section 9.1 below shall apply only once to any breach of this section 6.2.
- 6.3 If Seller fails to return replacement or reworked Goods to AIXTRON, Inc. or re-perform Services in a timely manner as specified in section 6.2 above, AIXTRON, Inc., may reject the Nonconforming Product or Nonconforming Service, as applicable, and receive from Seller a full refund of all amounts paid by AIXTRON, Inc for such Nonconforming Product or Nonconforming Service, as applicable. If AIXTRON, Inc. rejects any Nonconforming Product as described above, AIXTRON, Inc. may procure, upon such terms and in such manner as AIXTRON, Inc. reasonably deems appropriate, a similar product or service in substitution for the Nonconforming Product or Nonconforming Service and Seller shall reimburse AIXTRON, Inc. upon demand for all additional costs incurred by AIXTRON, Inc. in purchasing any such product or service.

7. INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 7.1 Seller shall defend (if required by AIXTRON, Inc.), indemnify, and hold harmless AIXTRON, Inc. and its affiliates, subsidiaries, assigns, subcontractors, and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses, obligations, causes of action, suits, or injuries, of any kind of nature (including attorneys fees), arising directly or indirectly from (i) any actual or alleged infringement of a patent, trademark, service mark, trade secret, mask work right, copyright or other intellectual property right of a third party by any Goods and Services ordered hereunder, except to the extent that the infringement arises solely and directly out of compliance with AIXTRON, Inc.'s written specifications, (ii) Seller's failure to comply with the requirements of section 7.3 below, (iii) any actual or alleged defect in design, material or workmanship of any Goods or Services ordered hereunder, or (iv) any claim arising out of or in any way connected with the Goods or Services provided under this Order and based on the death or bodily injury to any person, destruction or damage to property, or contamination of the environment and any associated clean up costs.
- 7.2 Without limiting the generality of section 7.1 above, if the use by AIXTRON, Inc. or its affiliates, subsidiaries, assigns, subcontractors, or customers of any Good and Service is enjoined ("Infringing Product"), Seller shall at its expense use its best efforts to procure the right for AIXTRON, Inc. and its affiliates, subsidiaries, assigns, subcontractors and customers to continue using the Infringing Product. If Seller is unable to do so, Seller shall at its expense (i) replace the Infringing Product with an equivalent non-infringing product, (ii) modify the Infringing Product to be non-infringing while remaining fully equivalent in functionality, or (iii) if unable to replace or modify the

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infringing Product, refund in full all amounts paid by AIXTRON, Inc. for the Infringing Product.

- 7.3 Seller shall remove from all Goods rejected, returned, or not purchased by AIXTRON, Inc., AIXTRON, Inc.'s name and any of AIXTRON, Inc.'s trademarks, trade names, service marks, insignia, part numbers, symbols, or decorative designs, prior to any other sale, use or disposition of such Goods by Seller.
- 7.4 Except as required by this Order, Seller shall maintain in strict confidence and shall not use or disclose any Confidential Information of AIXTRON, Inc. which is obtained, acquired or learned from AIXTRON, Inc.. "Confidential Information" includes, without limitation, all information designated by AIXTRON, Inc. as confidential, all information or data concerning AIXTRON, Inc.'s products (including the discovery, invention, research, improvement, development, manufacture or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods, and processes), information obtained through access to any information Assets/Systems ("IA/S") (e. g. computers, networks, voice mail, etc.) and any information which, if not otherwise described above, is of such a nature that a reasonable person would believe it to be confidential.
- 7.5 Access is limited to that specific IA/S, time periods, and personnel authorized by AIXTRON, Inc. and is subject to AIXTRON, Inc. information protection policies. Use of any other IA/S or during other time periods or by unauthorized individuals is expressly prohibited, even if an IA/S which Seller is authorized to access serves as a gateway to other IA/S outside the scope of Seller's authorization. Seller warrants that it will comply with these obligations and that access granted hereunder will not impair the integrity and availability of AIXTRON, Inc. IA/S. AIXTRON, Inc. may audit Seller to verify compliance with its confidentiality obligations hereunder. Seller warrants that it will disclose Confidential Information only to those of its employees, agents or subcontractors who have a need to know Confidential Information to perform work under this Order, have been informed of the obligations contained herein and have agreed in writing to be bound by them.
- 7.6 Any forecasts provided by AIXTRON, Inc. are only an accommodation to Seller, and shall not constitute a commitment of any type by AIXTRON, Inc.
- 7.7 **Tools, Material, and Information**
Any designs, sketches, drawings, blueprints, patterns, dies, molds, models, tools, gauges, equipment or special appliances are made or procured by Seller especially for producing the items covered by this Order and any designs, discoveries, creations, works, devices, masks, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, business processes, information and materials made, conceived or developed by Seller alone or with others which result from or relate to the Services performed hereunder (collectively, "Work Product"), shall become the exclusive property

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of AIXTRON, Inc. Immediately upon manufacture, procurement or creation thereof. Seller hereby irrevocably and unconditionally assigns to AIXTRON, Inc. all right, title, and interest worldwide in and to all Work Product and all intellectual property rights therein. If any intellectual property rights cannot be so assigned, then (i) Seller unconditionally and irrevocably waives the enforcement of such rights and all claims and causes of action of any kind against AIXTRON, Inc. with respect to such rights, and (ii) to the extent Seller cannot (as a matter of law) make such waiver, Seller unconditionally grants to AIXTRON, Inc. an exclusive, perpetual, irrevocable, worldwide, fully-paid license, with the right to sublicense through multiple levels of sublicenses, under any and all such rights (A) to reproduce, create derivative works of, distribute, publicly perform, publicly display, digitally transmit, and otherwise use any Work Product in any medium or format, whether now known or hereafter discovered, (B) to use, make, have made, sell, offer to sell, import, and otherwise exploit any product or service based on, embodying, incorporating, or derived from any Work Product, and (C) to exercise any and all other present or future rights in any Work Product. Seller shall maintain a current inventory list of the foregoing. Any Work Product and any item, materials, equipment, engineering data, or other technical or proprietary information furnished by or paid for by AIXTRON, Inc. ("AIXTRON Property") shall, (a) be or become, and shall be clearly marked and identified as, property of AIXTRON, Inc., (b) be kept in good working condition at Seller's expense and held by Seller on consignment at Seller's risk, (c) be used exclusively in the production for AIXTRON, Inc. of items required by this Order, and (d) be subject to disposition by AIXTRON, Inc. at any and all times and upon demand be immediately returned to AIXTRON, Inc.. Seller shall establish procedures for the adequate storage, maintenance and inspection of Work Product and AIXTRON Property and shall maintain inspection records available to AIXTRON, Inc. upon request. Seller understands and agrees that Seller has no right to use any Work Product or AIXTRON Property except as necessary to perform Services for AIXTRON, Inc. or otherwise perform Seller's obligations to AIXTRON, Inc. hereunder.

8. GOVERNMENTAL COMPLIANCE

- 8.1 Seller shall (i) comply with all federal, state, local, and foreign laws, rules and regulations applicable to its obligations under this Order, and (ii) furnish to AIXTRON, Inc. any information required to enable AIXTRON, Inc. to comply with such laws, rules, and regulations on its use of the Goods or Services.

9. DEFAULT

- 9.1 If Seller breaches any provision of this Order, AIXTRON, Inc. may terminate the whole or any part of this Order, unless Seller cures the breach within ten work days after receipt of AIXTRON, Inc.'s notice of breach.
- 9.2 For purposes of section 9.1 above, the term "breach shall include without limitation any (i) proceeding, whether voluntary or involuntary, in bankruptcy or insolvency by or against Seller, (ii) appointment, with or without Seller's consent, of a receiver or an

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assignee for the benefit of creditors, (iii) failure to provide AIXTRON, Inc., upon request, with reasonable assurances of performance, or (iv) other failure to comply with this Order.

- 9.3 In the event AIXTRON, Inc. terminates this Order in whole or in part as provided in section 9.1 above, AIXTRON, Inc. may procure, upon such terms and in such manner as AIXTRON, Inc. reasonably deems appropriate, products similar to the Goods and Services as to which this Order is terminated. Seller shall reimburse AIXTRON, Inc. upon demand for all additional costs incurred by AIXTRON, Inc. in purchasing such similar products.
- 9.4 The rights and remedies granted to AIXTRON, Inc. pursuant to this Order are in addition to, and shall not limit or affect, any other rights or remedies available to AIXTRON, Inc. at law or in equity.

10. IMPORT REQUIREMENTS

- 10.1 Upon AIXTRON, Inc.'s request, Seller shall provide AIXTRON, Inc. with appropriate certifications stating the country of origin for Goods, sufficient to satisfy the requirements of (i) the customs authorities of the country of receipt, and (ii) any applicable export licensing regulations, including those of the United States.
- 10.2 Seller shall mark every Good (or the Good's container if there is no room on the Good itself) with the country of origin. Seller shall, in marking the Goods, comply with the requirements of the customs authorities of the country of receipt.
- 10.3 If any Goods are imported, Seller shall when possible allow AIXTRON, Inc. to be the importer of record. If AIXTRON, Inc. is not the importer of record and Seller obtains duty drawback rights to the Goods, Seller shall, upon AIXTRON, Inc.'s request, provide AIXTRON, Inc. with documents required by the customs authorities of the country of receipt to prove importation and to transfer duty drawback rights to AIXTRON, Inc.

11. PRODUCT STEWARDSHIP

- 11.1 Seller shall accept back, free of charge, any material included in the Goods and packaging returned by AIXTRON, Inc. from any country that legally requires product take back from the user at the end of product life.
- 11.2 Seller shall, upon request, provide available environmentally related information regarding all materials included in the Goods and packaging that Seller ships to AIXTRON, Inc.

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12. MISCELLANEOUS

- 12.1 Seller shall be solely responsible for maintaining such adequate health, auto, workers' compensation, unemployment compensation, disability, liability, and other insurance, as is required by law or as is the common practice in Seller's trade, whichever affords greater coverage. Upon request, Seller shall provide AIXTRON, Inc. with certificates of insurance or evidence of coverage before commencing performance under this Order. Seller shall provide adequate coverage for any AIXTRON Property under the care, custody or control of Seller.
- 12.2 Seller shall not delegate any duties or assign any rights under this Order. Any attempted delegation or assignment shall be void.
- 12.3 The waiver of any term or condition of this Order must be in writing. No such waiver shall be construed as a waiver of any other term or condition except as provided in writing, nor as a waiver of any subsequent breach of the same term or condition.
- 12.4 This Order shall be interpreted and governed by the laws of the state of California without giving effect to any conflict of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Order.
- 12.5 IN NO EVENT SHALL AIXTRON, INC. BE LIABLE TO SELLER OR ANY THIRD PARTY FOR ANY LOST PROFITS OR LOST REVENUES OR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS ORDER, WHETHER OR NOT AIXTRON, INC. WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

13. RELEASE OF NEWS INFORMATION AND ADVERTISING

Seller shall not, without the prior written consent of AIXTRON, Inc. (a) make any news release, public announcement, denial, or confirmation of all or any part of the subject, matter of this Order, or (b) in any manner advertise or publish the fact that AIXTRON, Inc. has placed this Order.

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