PART I - STANDARD TERMS AND CONDITIONS

1. Scope and applicability

XOLTA hereby agrees to sell and deliver, and Purchaser hereby agrees to purchase and make delivery of, the Products listed in Schedule 1 (Quotation) to the Agreement subject to the terms and conditions of this Schedule 2 (Standard Terms and Conditions of Sale). This Agreement, including Schedule 1 (Quotation) and this Schedule 2 (Standard Terms and Conditions of Sale), constitutes the entire agreement concerning the sale of Products, unless the parties have agreed otherwise in writing. Where the Purchaser's IT installations, including the use of the Web Platform, will be temporarily or permanently cut off due to a disruption in the Internet, Purchaser understands and accept that the use of the Web Platform will be cut off due to a disruption in the Internet. XOLTA makes the Web Platform accessible 24/7/365 via a broadband Internet connection to a hosting environment. Once the Products are delivered, the Web Platform will be accessible, even if: i) access to the Web Platform is cut off, impaired or illegal due to XOLTA's own software or any third party infrastructure; ii) access to the Web Platform is cut off due to a disruption in the Internet. Furthermore, the Web Platform includes software from a third party or third party infrastructure, the right of use will at any time be subject to the terms applicable for such third-party software or third-party infrastructure.

2. Product Fee and payment terms

The purchase price and the nominated payment plan, payable by Purchaser to XOLTA for the purchase of the Products (“Product Fee”), is set out in Schedule 1 (Quotation). All prices are exclusive of VAT and other applicable taxes which shall be paid by Purchaser. The prices quoted do not include packaging. If no purchase price is stated in Schedule 1 (Quotation), XOLTA's standard prices in force at the time of delivery of the Products shall apply to the purchase. XOLTA is, however, entitled to adjust the purchase price if XOLTA's total costs for the manufacture of the Products increase compared to its disclosed standard prices by circumstances beyond XOLTA's control, such as increases in prices on raw material, electricity, taxes etc.

3. Retention of title to the Products

The Products shall remain the sole property of XOLTA until payment of the whole Product Fee stated in Schedule 1 (Quotation) and any costs incurred by XOLTA for e.g. delivery, shipment and insurance of the Products have been paid by Purchaser in full either to XOLTA or to XOLTA's authorized representative. The same shall apply to the transportation; if the delivery price in its discretion decide to include the transportation costs in its delivery in its disclaimer of liability. Until delivery has been made in full, Purchaser shall not be entitled to sell the Products to a third party or otherwise dispose of them in a manner which contravene XOLTA's retention of title.

4. Intellectual Property Rights

Nothing in this Agreement, including the license rights granted in section 5 and section 6, shall constitute a transfer of title or ownership to any intellectual property rights from XOLTA to Purchaser whatsoever. The name XOLTA and whatever trade names and trademarks XOLTA may use are property of XOLTA and shall not be reproduced if the agreement is terminated. Purchaser cannot register or use such names or trademarks in a manner which contravene XOLTA's retention of title.

5. License right to Embedded Software

XOLTA grants Purchaser a non-exclusive, non-sub licensable, non-transferable license right to use the Embedded Software as and only to the extent necessary for Purchaser to utilise the intended benefit of the Products. Purchaser may under no circumstances make any additions, changes or modifications to the Embedded Software and must not decompile or otherwise reverse engineer the Embedded Software. This license right shall cease to exist when the Products reach end of life.

6. Use of XOLTA Web Platform

XOLTA grants Purchaser a non-transferable, non-sublicensable, non-exclusive right to use the XOLTA web platform ("Web Platform") subject to: (i) the terms and conditions set out in this Agreement, and ii) Purchaser's payment of all applicable fees under the Agreement. The access to the Web Platform will be delivered via URL as set further out in Schedule 1 (Quotation). Purchaser may develop new modules or products which may be separately marketed and priced, and which are not included in this Agreement and do not form part of the XOLTA standard prices and which are not specifically granted hereunder are expressly reserved.

7. Availability of the Web Platform

Purchaser may use the Web Platform to obtain the full and intended benefit of the Products. Purchaser shall not in any way make available the Web Platform in whole or in part, or otherwise allow a third party to use or take advantage of the Web Platform or any part thereof. All rights not specifically granted hereunder are expressly reserved.

8. Delivery, inspection and returns

Unless otherwise set out in Schedule 1 (Quotation) regarding delivery and installation, the Products will be delivered by XOLTA to XOLTA's warehouse at the expected delivery date set out in Schedule 1 (Quotation). XOLTA shall to the extent reasonably possible observe the expected delivery date. Purchaser acknowledges that the delivery date(s) specified in Schedule 1 (Quotation) are expected dates only and that deviations from this date might occur. As such, delivery of the Products set out in Schedule 1 (Quotation) by giving Purchaser a prior written notice hereof. Unless otherwise set out in Schedule 1 (Quotation), all transportation of Products from XOLTA's warehouse to Purchaser shall be at Purchaser's own expense and at his sole risk. If so requested by Purchaser in Schedule 1 (Quotation), transportation, installation and insurance cover can be provided by XOLTA. All costs and expenses incurred by XOLTA will be included in the purchase price. XOLTA may use a sub-contractor to carry out the installation of the Products at Purchaser's premises.

9. Obligations of Purchaser

Purchaser is responsible for providing the Products with a certified LAN internet connection of min. 1.21 GBit/s as a Dynamic IP address from DHCP service. Purchaser is further responsible for always ensuring that the Products are online. In case of direct or indirect data exchange between XOLTA and Purchaser's IT installations, each of the parties are responsible for having in place sufficient IT installation against possible virus attacks, unethical use of data and similar damages.

Any costs related to Purchaser's obligations, including the non-fulfilment hereof, shall be borne solely by Purchaser and Purchaser shall cover any additional costs incurred by XOLTA in this regard.
21. Personal Data
To the extent (if any) that either party receives or provides personal data as this term is defined by GDPR in the course of the use of the Web Platform, the parties agree that they will comply with the data privacy laws applicable to its provision or receipt of such personal data. Both parties providing personal data are responsible for obtaining, maintaining and updating any notices, consents or approvals necessary to make such information available to the other party.

The parties agree that no processing of personal data shall be initiated by this Agreement. Neither party shall be considered a data processor in respect of personal data as defined by GDPR in the course of this Agreement. Neither party shall receive personal data from the other party and any use or disclosure of information in order to provide such personal data to the other party shall be restricted to information commonly available in the public domain, including any personal data necessary for the purpose of the agreement between XOLTA and Purchaser.

22. Assignment
20. Assignment
XOLTA reserves the right to transfer its rights and obligations under this Agreement to another party, provided that: i) such party is controlling, controlled by, or under common control with XOLTA; or ii) transfer is made to a third party in connection with a bona fide transfer of all or a separate part of XOLTA’s business.

XOLTA shall not be entitled to assign any rights or obligations under this Agreement.

21. Jurisdiction and Law Applicable
The validity, interpretation, construction and performance of the Agreement shall be governed by the laws of Denmark, with the exception of the Convention on Contracts for the International Sale of Goods (CISG).

Any disputes, controversies or disagreements arising out or in connection with these Standard Terms and Conditions, including any question regarding the understanding
of or the extent or scope of these Standard Terms and Conditions, which cannot be settled amicably between the parties shall be settled by the Court of Hilleden.

22. Export Control

In recognition of U.S. and local (in particular Danish) export control laws, Purchaser hereby agrees that any export license or other documentation will be obtained prior to shipment of any product or technical data acquired by the Purchaser from XOLTA. Accordingly, Purchaser shall not sell, export, re-export, transfer, divert or otherwise not to dispose of any such product or technical data directly or indirectly to any person or firm or country, or countries, in violation of the laws or regulations of the United States or local laws (in particular Danish laws). Furthermore, Purchaser agrees to notify any person obtaining such products or technical data from XOLTA of the need to comply with such laws and regulations. Purchaser agrees to, at its own expense, secure such licenses and export and import documents as are necessary to buy and resell the products. In case an export license is refused, Purchaser shall not be entitled to return products or technical data or ask for compensation.

PART II - TERMS AND CONDITIONS FOR XOLTA PRODUCT AND PERFORMANCE WARRANTY

23. Covered Products

This XOLTA Product and Performance Warranty (“Warranty”) applies to the XOLTA original industrial/batteries included in the Products, cf. Schedule 1 (Quotation) that have been verifiably bought as a new device from XOLTA and installed at the Purchaser’s premises by a professional installer designated by XOLTA.

24. Product warranty

XOLTA provides Purchaser with a product warranty for the Covered Products (“Product Warranty”) for the period set out in Schedule 1 (Quotation). The Product Warranty shall apply from the date of delivery of the Products as set out in Schedule 1 (Quotation). XOLTA may in its discretion provide Purchaser with an extended warranty period against payment of a fee as set out in Schedule 1 (Quotation). During the warranty period, XOLTA warrants that the Covered Products are free from material and manufacturing defects which significantly impair the functionality of the Product.

Any capacity deficiencies of the Covered Product shall be solely assessed under the Performance Warranty, cf. section 25 below, and do not constitute a Warranty Claim under this Product Warranty.

25. Performance warranty

XOLTA provides Purchaser with a performance warranty for the Covered Products (“Performance Warranty”) for the warranty period set out in Schedule 1 (Quotation). The Performance Warranty shall apply from the date of delivery of the Products as set out in Schedule 1 (Quotation). During the warranty period for this Performance Warranty, XOLTA warrants that the Covered Products can no longer be identified or has been impaired, damaged or destroyed due to one or more of the following circumstances:

- XOLTA must be notified immediately in writing if Purchaser wishes to assert a claim for breach of this Warranty ("Warranty Claim"). The notification must contain: i) the serial number(s) of the Covered Product(s), ii) a copy of the order confirmation, and iii) a detailed description of the basis of the Warranty Claim.

If the remedy fails, XOLTA is entitled to provide the same or another form of remedy repeatedly, at its discretion. With the installation of the replacement product or the replacement component, the Covered Product or the original component becomes the property of XOLTA.

29. Exclusions of Warranty

Claims under this Warranty are excluded when:

- The Warranty Claim has not been notified to XOLTA according to the process set out in section 27 above.
- The respective warranty periods have ended, cf. section 24 and 25 above.
- The Warranty Claim has not been notified to XOLTA within six months after Purchaser has or should have gained knowledge of Warranty Claim.
- The person entitled to the Warranty Claim refuses XOLTA or its representative access to proper testing of the Covered Product, or
- The serial number on the Covered Product can no longer be identified or has been modified.

Further, this Warranty does not apply to Covered Products that have been impaired, damaged or destroyed due to one or more of the following circumstances:

- Purchaser has not fulfilled its obligations as set out in section 9.
- The Covered Products are not continuously connected to the internet via LAN cable whereby XOLTA cannot monitor the performance of the Covered Products;
- The Covered Product has not been stored, transported, set up or installed in an appropriate and professional manner, in accordance with technical standards and regulations, in accordance with the respective installation manual of the Covered Products or in accordance with instructions of XOLTA;
- The Covered Product has been operated contrary to its intended use or contrary to the instructions in the respective installation manual for the Covered Product;
- The Covered Products were constantly out of service due to Purchaser for a period of more than two months after the initial installation.
- The Covered Product has not been serviced properly and professionally or according to technical standards or the maintenance instructions of Covered Product;
- The Covered Product has been exposed, even temporarily, to vibrations that not only insignificantly exceed the usual extent of vibrations caused by transport and installation.
- The Covered Product has been improperly altered or otherwise tampered with by the person entitled to the Warranty or third parties.
- An overvoltage has occurred in the power grid to which the Covered Products are connected.
- The Covered Product have been exposed to force majeure (in particular lightning, fire, earthquakes, natural disasters) or harmful environmental conditions such as air pollution, salt water or sulphur corrosion.

27. Warranty Claim process

XOLTA must be notified immediately in writing if Purchaser wishes to assert a claim for breach of this Warranty ("Warranty Claim"). The notification must contain: i) the serial number(s) of the Covered Product(s), ii) a copy of the order confirmation, and iii) a detailed description of the basis of the Warranty Claim.

In case of a performance Warranty Claim, XOLTA, or a competent third party designated by XOLTA, shall test the Covered Product according to its standard methodology (using 0.2 C and 25°C) in order to determine the merits of the Warranty Claim. If such test does not document that a Warranty Claim exists or it is determined that the Warranty Claim is excluded, cf. section 29 below, Purchaser shall reimburse XOLTA for all costs and expenses incurred as part of this testing.

28. XOLTA’s right to remedy

Purchaser’s sole and exclusive remedy in case of a documented breach of this Agreement by XOLTA, including for a documented Warranty Claim whether under the Product or the Performance Warranty, shall be, at XOLTA’s option, to either repair the Covered Product at a Purchaser’s location or a facility of XOLTA’s choice, replace the defective Covered Product with a functionally equivalent replacement product, or refund of the amount paid for the Covered Product. Purchaser is not entitled to assert any other remedy.