



TERMS AND CONDITIONS OF SALE

Controlling Document. THE ACCEPTANCE OF BUYER'S PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND ALTAWARE, INC. ("ALTAWARE") AGREES TO FURNISH THE HARDWARE, SOFTWARE, AND SERVICES ("PRODUCTS") COVERED THEREBY ONLY UPON THESE TERMS AND CONDITIONS. This document constitutes the entire agreement of the parties with respect to the subject matter thereof. Any term or condition of Buyer's purchase order inconsistent with or in addition to these Terms and Conditions shall not be binding upon Altaware. Unless Purchaser shall notify Altaware in writing to the contrary within ten (10) days of receipt hereof, acceptance of these Terms and Conditions shall conclusively be presumed. In absence of such notification, the sale and delivery by Altaware of the items covered hereby shall be conclusively presumed to be subject to these Terms and Conditions. No waiver, alteration, or modification of any of these provisions hereof shall be binding on Altaware unless made in writing and signed by an authorized representative of Altaware. These Terms and Conditions shall be applicable whether or not they are attached to or enclosed with the Products sold hereunder.

Delivery and Risk of Loss. Terms of sale are Free On Board (FOB) Origin unless a different shipping point has been designated by Altaware's quote. Title to Products shall pass to Buyer on Altaware's or its designated representative's tender of the Products to Buyer or a carrier. All risk of loss or damage to Products in transit shall be borne by Buyer. Shipment of Products to Buyer's designated location, if arranged by Altaware, shall be either freight collect or freight prepaid with charges invoiced to Buyer, unless agreed otherwise by the parties. Altaware reserves the right to make partial deliveries, and to invoice separately for such partial deliveries where amounts invoiced shall be paid when due.

Acceptance. Buyer shall examine all Products promptly upon receipt thereof. Within five (5) days of such receipt, Buyer shall notify Altaware in writing, via email or by facsimile, of any complaint, including any claims for shortages, defects, quality problems or delivery errors. If no notice is received from Buyer within said period, the Products delivered hereunder shall be deemed unqualifiedly accepted as of the date of delivery and Buyer will be conclusively presumed to have waived all such claims and complaints, except as permitted by Altaware's express warranty.

Security Interest. Altaware retains a security interest in Products delivered hereunder and in proceeds from the sale, exchange, collection or disposition thereof, until Buyer has made payment in full for such Products.

Payment. Payment for Products and Services is due at or before shipment of Products or provision of services unless Altaware grants credit in writing. If credit is granted, credit terms for Products shall require payment in U.S. Dollars thirty (30) days from date of invoice. Sums unpaid thirty (30) days after date of invoice shall be subject to a late payment charge of one and one-half percent (1.5%) per month from the due date, or the maximum amount permitted by law, if less. In the event of any default in payment, Buyer shall pay all costs of collection.

Taxes. Any manufacturer's tax, sales tax, use tax, excise tax, custom, inspection or testing fee, or any other tax, or charge of any nature whatsoever imposed currently or in the future by any federal, state, or other governmental authority, upon or with respect to the sale, purchase, delivery, shipment, storage, processing, use or consumption of any of the Products covered hereby shall be borne by Buyer in addition to the prices quoted or invoiced. In the event Altaware is required to pay any such tax, charge or fee, Buyer shall reimburse Altaware therefor.

Force Majeure. Altaware shall not be liable for any loss or damage as a result of any failure to perform or any delay in delivery due to any cause beyond Altaware's control, including but not limited to acts of God, acts of Buyer, fire, theft, accident, flood, war, acts of terrorism, sabotage, strikes, or other labor difficulties, riot, embargo, government act, regulation, rule, ordinance or request. In the event of such contingency, the date of performance shall be extended by a period equal to the time lost by the delay.

Both parties understand timely payment for products and/or services already delivered or confirmed as shipped are excluded from Force Majeure consideration.

Cancellations. Buyer has the right to cancel this contract for convenience upon prior written notice. A request by Buyer for delay in delivery beyond fifteen (15) working days from the contract delivery date shall be deemed to be a cancellation of the contract unless agreed to otherwise in writing by Altaware. Orders cancelled fewer than ten (10) days before delivery shall be subject to cancellation or restocking charges of twenty-five percent (25%) of the face value of the purchase order.

Limitation of Liability. ALTAWARE'S LIABILITY ON ANY CLAIM OF ANY KIND, WHETHER BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE FOR ANY EXPENSE, INJURY, LOSS, OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE PROVISIONS OF ANY SERVICE OR THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSPECTION, REPAIR, MAINTENANCE, INSTALLATION, OR USE OF ANY PRODUCT FURNISHED UNDER THIS CONTRACT SHALL IN NO CASE EXCEED THE ORIGINAL EQUIPMENT MANUFACTURER'S LIABILITY TO ALTAWARE UNDER IT'S CONTRACT WITH ALTAWARE, OR THE PURCHASE PRICE OF THE PRODUCT OR SERVICE WHICH GIVES RISE TO THE CLAIM, WHICHEVER AMOUNT IS LESS. IN NO EVENT SHALL ALTAWARE BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES, WHETHER OR NOT ALTAWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

OEM's Standard Limited Warranty. Altaware shall deliver to Buyer the manufacturer's standard limited warranty for the Products and such standard limited warranty shall be the only warranty that Altaware provides with respect thereto. Those standard limited warranties generally provide that the manufacturer warrants during the warranty term that all Products provided shall conform to the published specifications and shall be free from defects in material and workmanship when used under normal operating conditions, and that all services provided shall be performed in a professional and workmanlike manner. Copies of the manufacturer's standard limited warranty shall be provided upon request.

THE FOREGOING WARRANTIES ARE EXCLUSIVE OF ALL OTHER WARRANTIES WHETHER WRITTEN, ORAL, OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

Patent and Trademark Indemnity. Altaware accepts no liability for, and Buyer shall hold Altaware harmless against any expense or loss from infringement of patents, trademarks, or other intellectual property rights of others arising from Altaware's compliance with Buyer's design, specifications, instructions or with Purchaser's requirements. Furthermore, Buyer acknowledges that the only patent and trademark indemnity and remedies provided herein is that provided by the manufacturer. Copies of the manufacturer's indemnity provision shall be provided upon request.

THE FOREGOING PROVISION IS STATED IN LIEU OF ANY OTHER EXPRESSED, IMPLIED, OR STATUTORY WARRANTY AGAINST INFRINGEMENT AND SHALL BE THE SOLE AND EXCLUSIVE REMEDY FOR PATENT INFRINGEMENT OF ANY KIND.

No Assignment. Buyer shall not assign its rights hereunder.

California Law and Disputes. The agreement hereunder shall be governed by and construed in accordance with the laws of the State of California. Any action based on this contract must be commenced within one (1) year after the cause of action arises.