



# Terms & Conditions

VIP Computers, LLC  
2555 NW 102<sup>nd</sup> Ave, Suite 205  
Miami, FL 33172  
USA

## **TERMS AND CONDITIONS OF SALE**

These Conditions of Sale apply to all orders that you place with us, whether the order is placed on the telephone, in writing, by fax or email or on our website. Please make sure that you read these conditions carefully as they set out all the terms in relation to us supplying you goods. We have tried to write them in plain English so that we both know where we stand.

### **1 Definitions and interpretation**

1.1 In these Conditions the following terms have the following meanings:

#### **"Conditions"**

The terms and conditions of sale set out in this document;

#### **"Delivery Address"**

The address for delivery of the Goods which shall be Your principal place of business unless You tell Us otherwise and We confirm this on the Order Acknowledgement;

#### **"Delivery Date"**

The date on which We estimate that the Goods will be delivered to the Delivery Address which will be set out on the Order Acknowledgement and where this is not a specified date, but a time period, the time period shall run from the date of the Order Acknowledgement;

#### **"End User"**

The end user of the Goods;

#### **"Force Majeure Event"**

An event which is beyond Our reasonable control and which may include but shall not be limited to: (1) acts of terrorism, insurrection, riots, civil unrest and military action; (2) the exercise of emergency powers by any local, regional or national governmental authority; (3) fire, flood, earthquake, storm and other natural disasters; (4) industrial action, strikes and lock-outs; (5) blockage or embargo; and (6) the failure or delay of supplies of power, fuel, transport, equipment, telecommunications systems, Internet or other goods and/or services (including any third party materials);

#### **"Goods"**

The goods which We agree to supply to You in the Contract;

#### **"Manufacturer"**

The manufacturer of the Goods;

#### **"Minimum Spend"**

A minimum spend level per Order

#### **"Order"**

Any agreement between Us and You for the sale and purchase of Goods;

#### **"Order Acknowledgement"**

A document sent by Us to You once We have received Your Order, which confirms the Order;

#### **"Our"/"Us"/"We"**

VIP Computers, LLC a company registered in the state of Florida whose office is at 2555 NW 102<sup>nd</sup> Ave, Suite 205, Doral, FL 33172, USA;

#### **"Price"**

The price set out on the Order Acknowledgement or, if no price is set out on the Order Acknowledgement, the price of the Goods shall be calculated in accordance with Our price list which is in force on the date that We accept the Order;

#### **"Quote"**

An estimate of the cost of supply of the Goods given by Us;

#### **"Website"**

Our website at the domain URL: vip-computers.com and any other sub-domains of the website and any other websites operated by Us;

#### **"Working Days"**

All days other than Saturdays, Sundays and US public holidays;

#### **"You"/"Your"**

The customer who agrees to purchase the Goods from Us on these Conditions whose details are set out on the Key Terms Sheet.

1.2 In these Conditions:

1.2.1 the headings are included only to help You read them and they have no affect on how the Conditions are constructed or interpreted;

1.2.2 any reference to a "clause" means a clause in these Conditions; and

1.2.3 any reference to a "party" means either You or Us depending on the context, and references to "parties" shall mean both of us.

## **2 Basis of sale**

2.1 These Conditions apply to all Orders for the sale of Goods entered into by Us.

2.2 When You place an Order with Us, You agree to deal with Us on these Conditions, unless we specifically agree any other terms between us which are confirmed in writing by Us. No other terms, conditions, warranties or representations will apply (whether they are found in any purchase order, confirmation of order, or any other document).

2.3 We may amend these Conditions at any time, for any reason, but if We do then We will inform You of the change and the new conditions will only apply to Orders made after that date. If either of us want to amend these Conditions in any other way then We must agree to it in writing, clearly stating which clause is to be varied and full details of what the variation is and we must both sign it.

2.4 We will use Our reasonable efforts not to, but if we make any typographical, clerical or other error or omission in any sales literature, Quote, price list, Offer Acknowledgement, invoice or other document or information issued by Us, We will be entitled to correct the mistake without any liability on Our part.

### **3 Acceptance of Orders**

3.1 You agree to purchase the Goods from Us and We agree to sell the Goods to You on the terms contained in these Conditions.

3.2 When You order Goods from Us this will be considered to be an offer by You to buy the Goods subject to these Conditions. These Conditions will then be binding on You, but they will not bind Us until We have sent You an Order Acknowledgement.

3.3 When we provide You with a Quote, this is not an offer. We may withdraw or amend any Quote at any time before accepting the Order.

3.4 It is Your responsibility to make sure that the terms of Your Order are complete and accurate.

3.5 The supply of Goods is subject to availability. If We do not supply the Goods to You for any reason, We will not charge You for those Goods and We will refund any money already paid for them. However, We will not be responsible for compensating You for any other losses which You may suffer if We do not supply the Goods.

3.6 You shall not be entitled to cancel the whole of or any part of any Order which We have accepted, unless We agree to it. Any cancellation that We do accept will be subject to an administration fee which will be charged at the current rate in force.

### **4 Order collection**

4.1 All orders are EXW (Incoterms) VIP Computers Miami nominated warehouse, unless otherwise specifically mentioned in the order. Delivery Date shall mean the date on which We make the Goods available for collection by You, as stated on the Order Acknowledgement. If, for any reason, the Goods will not be ready for collection on the date stated on the Order Acknowledgement, We shall use Our reasonable efforts to notify You of this.

4.2 You must inspect the Goods on collection and if the Goods are damaged or the incorrect quantity of Goods is available on collection, You must clearly mention this on delivery note and sign for the Goods as damaged / incorrect quantity on the POD from the warehouse, on receipt of the Goods, otherwise You shall not be entitled to make a claim against Us in respect of the damage or short delivery.

4.3 You will not be able to reject the Goods or fail to collect them if We do not deliver them or make them available on the Delivery Date. If You fail to collect the Goods (or of an installment of the Goods) and there is no defect in the Goods, then You shall pay Us for any losses that We suffer or costs or expenses that We incur as direct or indirect result of Your failure to collect the Goods. 4.4 If, by mistake, We prepare more Goods on collection than You ordered then We will be entitled to come and collect those Goods or request that You deliver them back to Us at Our expense.

**5 Defects and returns** 5.1 If You notify Us that less than the correct amount of Goods were made available on collection in accordance with clause 4.2, then We shall have a reasonable amount of time within which to investigate Your claim of short delivery. If We agree that less than the correct amount has been made available to You then We shall arrange for the shortfall to be made available for collection by You within a reasonable period, or the difference in price credited to You. This clause does not apply where We have informed You that the Goods are being made available in installments.

5.2 If the defect could not reasonably have been discovered on collection of the Goods, then You shall be entitled to return the Goods within a reasonable time of no more than 14 days from date of purchase provided that You notify Us within 2 (two) Working Days of discovering the defect and the Goods are still covered by the particular manufacturer's warranty period by the time goods are returned to us.

5.3 If Your claim that the Goods are defective is valid then We will repair or replace the Goods. If this is not possible, We will refund You the current market value of the defective Goods or the invoiced price, whichever is lower.

5.4 Sometimes, the Goods can be returned directly to the Manufacturer. Where We inform You that this is the case, or the packaging on the Goods or the material You have in relation to the Goods states this, You must contact the Manufacturer about the defective Goods, and You must not return the Goods to Us.

5.5 It is Your responsibility to comply with any of Manufacturer's terms regarding the return, repair or replacement of defective Goods. We shall not be liable for any Goods that cannot be repaired or replaced by the Manufacturer because You have not complied with its terms.

5.6 We will only accept returned Goods if:

5.6.1 You have used stored and handled the Goods in accordance with the Manufacturer's instructions;

5.6.2 You have notified Us that You are returning the Goods and We have accepted this and have issued You with a returns material authorization (RMA) number;

5.6.3 You provide Us with proof of purchase;

5.6.4 You properly inform Us about the details of the defect; and

5.6.5 the Goods are clearly marked in a visible place with the item code and the return material authorization (RMA) number along with packing slip detailing the item wise quantities. Items received without valid RMA numbers will not be accepted

5.6.6 You ship defective items with a courier or trackable delivery service

5.7 The goods must reach Us within 14 days after issuing of the RMA number

5.8 Please make sure you have adequate insurance for items in transit. We will not be responsible for damaged or missing items during transport - Items deemed by Us as inappropriately packaged for shipping may not be accepted

5.9 Any goods you send back for RMA must have been tested bad prior to returning the part. If the Goods are not defective but You have returned them, then in addition to paying Us the Price, You shall also refund Us for any delivery costs that We incur as well as a restocking fee which will be charged at the current rate in force

5.10 If You try to repair the Goods, alter or modify them without Our consent or if You remove, deface or alter the serial number on the Goods or any "void if peeled" sticker, if You do anything to the Goods that means that the Manufacturer's warranty or guarantee does not apply then We will not be liable to repair, replace or refund You for the Goods.

5.11 We cannot warrant an item that has been improperly used or physically damaged

5.12 We cannot warrant products as fit for any particular use or purpose. We highly recommend that You evaluate a

sample unit to determine if the product will work in Your particular configuration. There are many products that may be incompatible with a certain brand or a certain part. In such case it is Your responsibility to resell the product into an application in which the part will work. We cannot accept returns because they will not work in a particular application if they function correctly in others.

## **6 Price and payment**

6.1 You shall pay Us the Price for the Goods.

6.2 We reserve the right, by giving notice to You at any time before the Goods are made available for collection, to increase the Price to take account of any increase in the cost to Us of supplying You the Goods which is due to:

6.2.1 any factor beyond Our control (which may include, but is not limited to Force Majeure Events, changes in Our supply costs, exchange rate fluctuations and charges in import duties or levies);

6.2.2 any change in delivery dates or quantities for the Goods which You request; or

6.2.3 any delay caused by Your instructions or failure by You to give Us adequate information or instructions; provided that You are entitled to cancel the Order within 2 (two) Working Days of being notified of the increase.

6.3 Whilst We try to ensure that prices set out on Our Pricelists are accurate, mistakes may sometimes occur. If We discover a mistake in the price of the Goods, We will contact You as soon as possible and give You the option to either re-order the Goods at the correct price or cancel Your Order. If We cannot contact You We will treat the Order as having been cancelled. If the Order is cancelled We will not charge You for those Goods and will refund any money already paid for them.

6.4 Unless otherwise stated on the Order Acknowledgement, the Price is exclusive of charges for transport, packaging and insurance together with any additional expenses paid or incurred by Us regardless of whether the Delivery Address is in US or not. Transport and packaging will be charged at the current rate in force. 6.5 The Price is exclusive of any applicable sales tax, provided that you have made available your resale tax certificate or proof of export.

6.6 If, in any one Order, You fail to order Goods to the value of less than the Minimum Spend then We shall charge You an administration fee which will be charged at the current rate in force.

6.7 We shall be entitled to invoice You for all amounts due under the Order on or at any time after collection of the Goods. If the Goods are to be collected by You or if You wrongly fail to take delivery of them, We shall be entitled to invoice You at any time after We have notified You that the Goods are ready for collection or (as the case may be) the date that You failed to take delivery of the Goods.

6.8 Unless We have agreed in writing otherwise, You shall pay Us by method of payment as agreed upon on account opening.

6.9 You must pay Us in respect of all invoices on or before their due date in full in accordance with the payment terms set out on the Key Terms Sheet or as otherwise agreed between us.

6.10 Your payment shall only be considered to have been received by Us once We have received cleared funds in our account. 6.11 You must make all payments due under the Order in full without any deduction (whether by way of set-off, counterclaim, discount, abatement or otherwise) unless You have a valid court order which requires Us to pay an amount equal to such deduction to You, or unless We have otherwise agreed to it in advance in writing. We do not accept debit notes.

6.12 If We do not receive full payment of the invoice by the due date then (in addition to any other rights that We may have) We shall be entitled:

6.12.1 to cancel the Order; and/or

6.12.2 to sue for the entire Price; and/or

6.12.3 to charge 1.5% monthly interest (both before and after any judgment); and/or

6.12.4 to demand that You immediately return to Us all Goods that We agreed to sell to You in which the property has not passed to You in accordance with the provisions of clause 8 below and You agree to reimburse to Us Our costs or expenses in recovering such Goods.

6.13 For the avoidance of doubt, We offer no discounts or incentives to Our customers, including but not limited to, sale or return options, stock rotation, price protection or rebates.

## **7 Limitation of liability**

7.1 Our total liability under each Order is limited to that which We claim from Our supplier.

7.3 We will not be liable for:

7.3.1 any loss of profits;

7.3.2 loss or depletion of goodwill;

7.3.3 loss of anticipated savings, business opportunity or data; or

7.3.4 for any indirect, special or consequential loss or damages regardless of how they occur and regardless of the type of claim (for example, whether in contract, strict liability, tort (including but not limited to, negligence)) and regardless of whether We knew or had reason to know about the claim.

## **8 Risk and title**

8.1 The Goods are at Your risk as soon as they have been collected and signed for by you or your representative at our warehouse

8.2 Ownership of the Goods shall not pass to You until We have received in full (in cash or cleared funds) the Price of the Goods and all other sums which are or which become due to Us from You on any account. We shall be entitled to recover payment for the Goods even if ownership of the Goods (or any part of them) has not passed from Us.

8.3 Until ownership of the Goods has passed to You, You agree:

8.3.1 to hold the Goods on Our behalf;

8.3.2 to keep the Goods separately identifiable from all Your other goods or those of any third party so that they can be easily identified as Our property;

8.3.3 to allow Us (or any of Our agents or employees) to enter any premises where the Goods are being held or may be stored in order to inspect them, at any time or, where Your right to possession has terminated, to recover them;

8.3.4 not to destroy, deface or obscure any identifying mark, barcode or packaging on or relating to the Goods; and

8.3.5 to keep the Goods in a satisfactory condition and keep them properly insured on Our behalf for their full price

against all risks, and if We ask You, You must show Us the policy of insurance.

8.4 You may only resell the Goods before ownership has passed to You if the sale happens in the ordinary course of Your business at full market value.

8.5 Your right to possession of the Goods shall terminate immediately if:

8.5.1 We are entitled to terminate the Order under clause 11 below; or

8.5.2 You put any kind of financial or legal burden on the Goods or put a charge over them in any way.

8.6 We shall be entitled to re-sell or otherwise dispose of recovered Goods in any way that We, in Our absolute discretion, think fit. You hereby grant to Us a nonexclusive, world-wide, royalty free, perpetual, irrevocable license (with a right to sub-license) to use, for the purposes of such re-sale or other disposal, any and all trade marks which You may have applied to the Goods or by any third party at Your request or with Your consent.

8.7 Regardless of how the Order is terminated, when it does terminate Our (but not Your) rights contained in this clause 8 shall remain in full force and effect

## **9 Product Data**

9.1 We make all reasonable efforts to ensure that all Product Data that We make available to You is accurate, however because We rely on information from Our suppliers We cannot guarantee that it is always accurate. We will not be liable for any losses incurred by You due to the inaccuracy of the Product Data.

9.2 Unless We agree to it beforehand in writing, We shall not supply Product Data to any third parties at Your request.

## **10 Termination**

10.1 We shall be entitled to terminate the Order immediately by notice in writing to You if:

10.1.1 You commit an irreparable breach of the Order or persistently repeat a reparable breach or commit any reparable breach and You fail to remedy it within 30 (thirty) days of receipt of a notice from Us informing You of the breach and asking You to put it right; or

10.1.2 You make an arrangement with or enter into a compromise with Your creditors, You become the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, You are unable to pay Your debts or You otherwise become insolvent or suffer or is the subject of any restraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United States or elsewhere; or

10.1.3 You cease or threaten to cease to carry on business; or

10.1.4 there is at any time a material change in Your management, ownership or control; or

10.1.5 if We reasonably think that any of the events specified in clauses 10.1.2 to 10.1.4 is about to occur and We notify You accordingly.

10.2 If We terminate the Order in line with clause 10.1 above then, We shall be entitled to cancel the Order or suspend any further deliveries to You under the Order and, if the Goods have already been delivered but not paid for, You must immediately pay Us the Price regardless of any previous agreement or arrangement to the contrary and We shall be entitled to charge interest from the time of such cancellation or suspension until We receive payment. This clause 10.2 shall not prevent Us from making any other claims against You.

## **12 Confidentiality**

12.1 You must keep confidential any of Our information which is marked as confidential or which by its nature is confidential that You obtain under or in connection with the Order and You must not divulge that information to any other person except for the purposes of the Order nor must You use it Yourself for any other purpose without Our prior written consent.

12.2 However, the obligations of this clause 12 shall not apply to any information that You can show:

12.2.1 is in the public domain other than as a result of a breach of the Order or any other obligations of confidentiality;

12.2.2 is or was lawfully received from someone else who is or was not under an obligation of confidentiality with respect to that information;

12.2.3 is required to be disclosed under operation of law, by court order or by any regulatory body of competent jurisdiction (but then only to the extent and for the purpose required);

12.2.4 is approved for disclosure by Us in writing; or

12.2.5 was developed independently of and without reference to confidential information disclosed by Us; provided that You shall provide Us with at least ten (10) days' written notice of Your intention to rely upon one or more of these exceptions, and that notice specifies details of the exception that You want to rely on and the information concerned.

12.3 You shall be entitled to divulge Our confidential information to Your employees, agents, directors, officers, sub-contractors, professional advisors and consultants who have a need to know that information in connection with the Order provided that You ensure that such employees, agents, directors, officers, sub-contractors, professional advisors and consultants are aware of and, shall procure that such employees, agents, directors, officers, sub-contractors, professional advisors and consultants comply with, these obligations as to confidentiality.

12.4 The provisions of this clause 12 shall continue in force despite the termination or expiration of the Order.

## **13 Force majeure**

We have the right to defer the date of delivery or to cancel the Order or reduce the volume of the Goods ordered by You (without liability to You) if We are prevented from or delayed in the carrying on of Our business due to a Force Majeure Event, provided that, if the event in question continues for a continuous period in excess of 60 (sixty) days, You shall be entitled to give notice in writing to Us to terminate the Order.

## **14 Non-Solicitation**

14.1 You agree that for a period of twelve (12) months from the date of Your last Order, You shall not for any reason attempt to entice away from Us any person who was at any time for the period of twelve (12) months from the date of Your last Order in Our employment or a contractor engaged by Us (either directly or indirectly), without Our prior written consent.

14.2 In the event that You breach clause 14.1 above, You shall pay to Us the greater of: (i) the relevant employee's or contractor's gross annual salary inclusive of all benefits at the time of their resignation or departure; or (ii) the equivalent of twelve months' of the relevant employee's or contractor's new annual salary or fee inclusive of all benefits. We and You both agree that this sum is fair compensation for the loss suffered as a result of a breach of clause 14.1.

14.3 Nothing in this clause 14 is intended to restrict the right of any individual to seek employment with whomsoever they wish, but this clause is intended to provide for due compensation where such a situation occurs as a result of entering into these Conditions, recognizing that loss of experienced personnel can have a serious effect upon any employer.

**15 General**

15.1 In addition to any remedies available to Us under the Order We shall be entitled to pursue any other rights which We may have against You.

15.2 If at any time We have a claim against You and We do not pursue that claim quickly, it does not mean that We cannot pursue that claim when We are ready.

15.3 If a court decides that a part of these Conditions is not enforceable in law, that does not mean that the rest of it is not enforceable.

15.4 Any notice or written communication required or permitted to be served on or given to either party under the Order shall be delivered by hand or sent by recorded delivery mail to the other party at its address set out above or to such other address which it has been previously notified to the sending party and it shall be considered to have been given on the day of delivery.

15.5 The Order is personal to You and You may not assign, transfer, sub-contract or otherwise part with the Order or any right or obligation under it without Our prior written consent.

15.6 The parties to these Conditions do not intend that any term of these Conditions shall be enforceable by any person other than Us or You by virtue of the Contracts.

15.7 Any reference in these Conditions to any statute, law, statutory instrument, enactment, order, regulation or other similar instrument having the force of law shall be considered to include any lawful amendment, re-enactment, extension, replacement, modification, consolidation and/or repeal of it.

15.8 If things go wrong and there is a dispute, the Courts of the State of Florida, United States of America or the United States District Court for the Southern District of Florida shall have jurisdiction over the transactions covered by **Our** invoices under the laws of the State of Florida, United States of America

Any proceedings that You bring against Us shall be brought in the courts of the State of Florida, however We may take proceedings against You in another court of competent jurisdiction if we choose to do so.