

## **Terms & Conditions of Sale**

**SCOPE.** If Purchaser has entered into a written agreement with Apple Inc., a California corporation, ("Apple") (e.g., Master Development and Supply Agreement, Master Goods Agreement, Finished Goods Agreement, Component Sales Agreement) governing Apple's sale of goods to Purchaser, then those terms and conditions shall apply to this sale. If no such current agreement with Apple exists and until such time a written agreement is entered into between Apple and Purchaser, the terms and conditions contained herein ("Terms & Conditions of Sale") shall apply to all orders placed by Purchaser and by placing an order, Purchaser accepts these Terms & Conditions of Sale. Any term or condition on any order or other document submitted by Purchaser shall be of no force or effect whatsoever, and Apple specifically rejects any different or additional terms and conditions proposed by Purchaser.

**NO RESALE.** Goods purchased shall be for the purpose of manufacturing goods by or for Apple, and shall not be used by Purchaser for any other purpose or resold or otherwise distributed to any other entity or individual unless authorized by Apple.

**EXPORT COMPLIANCE.** All goods sold pursuant to these Terms & Conditions of Sale are subject to all applicable laws, regulations, orders and other limitations on the export and re-export of commodities, technical data and software. PURCHASER SHALL BE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE EXPORT AND REEXPORT CONTROL RULES THAT APPLY TO ITS RESALE ACTIVITIES AND further agrees that it will not export, re-export, resell or transfer any export-controlled commodity, technical data or software: (i) in violation of such limitations imposed by the United States, or any other relevant national government authority; (ii) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or other approvals; (iii) to any country or national or resident of a country to which trade is embargoed by the United States, or any other relevant national authority ; (iv) to any person or firm on any relevant government agency restricted party lists, (examples: United Nations Sanctions list, United States Denial Lists, Office of Foreign Assets Control Specially Designated Nations List, etc.); or, (v) for use in, or to an entity that might engage in, any sensitive nuclear, chemical or biological weapons, or missile technology end-uses unless authorized by the United States Government and any other relevant government agency by regulation or specific license.

**ORDERS AND PRICING.** Apple reserves the right to accept or decline any order, in whole or in part, and to cancel any accepted order prior to shipment. In declining or canceling an order, Apple may elect to consider only its own interests and will not be required to consider the effect on Purchaser. Apple may make partial shipments of Purchaser's order. Apple will not be liable for any failure to ship complete orders. Purchaser will be invoiced separately for each partial shipment and will pay each

invoice when due, without regard to subsequent deliveries. Should orders for goods exceed Apple's available inventory, Apple will allocate its available inventory and make deliveries (including partial shipments) on a basis Apple deems equitable, in its sole discretion and without liability to Purchaser. Apple and Purchaser already have agreed to prices for the Goods. Prices include standard freight and insurance using an Apple-selected carrier. All applicable local sales or use taxes, duties, or other import costs, if any, shall be paid by Purchaser.

**TITLE AND DELIVERY.** Risk of loss to goods will pass to Purchaser upon delivery at Apple's designated delivery location. Title to goods will pass to Purchaser upon delivery at Apple's designated delivery location or if none is specified, in international waters or airspace, and in all cases, outside the customs border of any country other than the United States of America. For the avoidance of doubt, Apple cannot and will not transfer title to goods within the customs border of any country other than the United States of America. Purchaser understands and agrees that Apple will recognize the sale of goods at the time of delivery, and Purchaser agrees to issue necessary documentation through a "goods receipt" at the time of delivery. Purchaser shall not send returned goods to Apple unless authorized by Apple.

**PAYMENT.** Payment is due no later than forty-five (45) days after the date of delivery unless otherwise specified by Apple in the invoice. Apple reserves the right to change or terminate Purchaser's credit terms at any time in Apple's sole discretion. Should Purchaser not qualify for credit or should credit terms be suspended by Apple for any reason, all orders shall be prepaid by Purchaser. Receipt of any check, draft or other commercial paper shall not constitute payment until Apple has received in cash in United States dollars (unless otherwise noted on the invoice, and agreed to between the parties hereof) the full amount thereof.

**NO WARRANTY.** All goods are sold "as is" with all faults and without warranty from Apple, but may be accompanied by a manufacturer's warranty. APPLE MAKES NO WARRANTY TO PURCHASER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GOODS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, APPLE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND EXPRESSLY DISCLAIMS ANY LIABILITY OR INDEMNITY OBLIGATION RELATING THERETO.

**SOFTWARE RIGHTS.** Goods may contain software, including but not limited to operating systems, firmware, and applications. Purchaser shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form without Apple's prior written consent. These obligations are in addition to any obligations or restrictions set forth in any license that may accompany the goods.

**LIMITATION OF LIABILITY AND REMEDIES.** IN NO EVENT SHALL APPLE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL

DAMAGES INCLUDING, WITHOUT LIMITATION, LOST BUSINESS PROFITS OR REVENUE. DIRECT DAMAGES SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE AMOUNT OF \$300,000 IN THE AGGREGATE. THIS LIMITATION IS A CRITICAL ELEMENT OF THE PARTIES' BARGAINED-FOR CONSIDERATION AND WILL BE EFFECTIVE EVEN IF APPLE IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

THE REMEDIES SET FORTH IN THESE TERMS & CONDITIONS OF SALE SHALL BE PURCHASER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THESE TERMS & CONDITIONS OF SALE BY APPLE.

### **GENERAL TERMS.**

**Governing Law.** These Terms & Conditions of Sale will be governed and interpreted under the laws of California, U.S.A., without regard to its conflict of laws provisions. Notwithstanding the foregoing, Apple reserves the right to institute proceedings against Purchaser at any time before a court of competent jurisdiction under applicable law. The parties expressly waive the applicability of the UN Convention on the International Sale of Goods.

**Severability.** If a court of competent jurisdiction holds that any provision of these Terms & Conditions of Sale is invalid or unenforceable, the remaining provisions of these Terms & Conditions of Sale will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of these Terms & Conditions of Sale.

**Waivers.** A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind.

**Assignment.** Purchaser shall not assign its order, or any interest therein, or any rights hereunder without Apple's prior written consent. Apple may assign these Terms & Conditions of Sale, in whole or in part, in Apple's sole and absolute discretion, to any affiliate of or successor in interest to Apple, without the consent of Purchaser. Notice of such assignment may be given by email, and is deemed given when sent.

**Force Majeure.** No party hereto will be liable for delay or failure to fulfill its obligations under these Terms & Conditions of Sale due to acts of God beyond its reasonable control, provided it promptly notifies the other party and uses reasonable efforts to correct such failure or delay in its performance.

**Entire Agreement.** These Terms & Conditions of Sale contain all the agreements, warranties, understandings, conditions, covenants, and representations made between Purchaser and Apple. Neither Purchaser nor Apple will be liable for any

agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in these Terms & Conditions of Sale. Purchaser acknowledges that Apple reserves the right to refuse any different or additional provisions in purchase orders, invoices, or similar documents, and such refused provisions will be unenforceable. Nothing in these Terms & Conditions of Sale creates a joint venture, partnership, franchise, employment or agency relationship or fiduciary duty of any kind.

**Modifications.** No modification to these Terms & Conditions of Sale will be binding unless in writing and signed by an authorized representative of each party.

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