

# PURCHASE TERMS

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All Products are quoted subject to these terms and conditions.

## 1. Definitions.

- 1.1. "Customer" means an entity to which the Products are sold by Buyer.
- 1.2. "Manufacturer Agreement" means the terms and conditions set out in the reseller (or similar) agreement between Buyer and manufacturer allowing Buyer to resell or sublicense such manufacturer Products.
- 1.3. "Order" means a purchase order or similar document by which Buyer procures Products from EC America.
- 1.4. "Products" means the items offered by a manufacturer to EC America and subsequently offered by EC America to Buyer as set forth on the Quote, *i.e.*, hardware, firmware, software, services, including managed services, and related updates or upgrades, etc..
- 1.5. "Quote" means the statement issued by EC America to Buyer containing the descriptions, price, discounts and payment terms for the desired Products.

## 2. Rights and Responsibilities of the Parties

- 2.1. EC America shall:
  - 2.1.1. Sell the Products specified on the Quote to Buyer in accordance with these terms and conditions; and
  - 2.1.2. Inform Buyer of any manufacturer specific ordering requirements.
- 2.2. Buyer shall:
  - 2.2.1. Purchase Products from EC America in accordance with these terms and conditions;
  - 2.2.2. Submit to EC America a Tax Exempt Certificate, if applicable;
  - 2.2.3. Display, operate, demonstrate, and sell Products strictly in accordance with these terms and conditions and the Manufacturer Agreement between the Buyer and manufacturer, if one exists. Where a Manufacturer Agreement is not in place between Buyer and a manufacturer, Buyer further agrees to: 1) provide EC America a written authorization from the manufacturer granting Buyer the right to sell the Products, and 2) sell such Products to the Customer subject to the manufacturer's commercial terms (as may be modified to comply with government procurement laws and regulations);
  - 2.2.4. Not use any of EC America's proprietary information or confidential information (collectively, "Confidential Information"), including but not limited to business and/or Product plans, pricing, marketing initiatives, designs, and documentation, for any purpose not set forth herein;
  - 2.2.5. Upon request, provide a copy of the sales, purchase, or delivery order from Customer for sales subject to this Quote; and
  - 2.2.6. Agree that nothing herein authorizes Buyer to utilize any EC America public sector contract vehicle or any contract vehicle of EC America's affiliates or parent.

## 3. Orders, Payment, and Delivery

- 3.1. Currency. All monetary amounts expressed or referred to in this Quote, *e.g.*, list prices, shall be in U.S. dollars.
- 3.2. Order Forms.
  - 3.2.1. Requirements of an Order. Buyer shall order Products by issuing a purchase order, duly signed by an authorized purchasing agent. Each Order shall reference this Quote; specify Buyer's purchase order number; state the quantity, type, and configuration of each Product ordered; reference Buyer's prime contract number, if any; and a requested delivery date.
  - 3.2.2. Order Placement. Buyer's order may be delivered by email or facsimile. Buyer shall contact its EC America account team for the appropriate email or facsimile information.
  - 3.2.3. Changes to Terms and Conditions. Any terms and conditions contained in a subsequently issued purchase order, which are inconsistent with or in addition to the terms and conditions contained herein, shall be considered void and of no force or effect.
- 3.3. Order Cancellation. EC America may cancel any Orders placed by Buyer, or refuse or delay shipment thereof if Buyer: (a) fails to make payment to EC America in accordance with the terms and conditions herein, including without limitation any interest or late payment fees due hereunder; (b) fails to meet reasonable credit or financial requirements set forth by EC America from time to time, including without limitation, any limitations on allowable credit; or (c) fails in any material way to comply with these terms and conditions. Buyer may request cancellation of an Order and EC America shall grant such request provided that EC America's agreement with the applicable manufacturer shall allow for such cancellation.
- 3.4. Prices. Prices for Products are set out on the Quote.

- 3.5. Discounts. Buyer shall be entitled to the discount set forth on the individual Quote from EC America.
- 3.6. Exclusion of all Taxes from Purchase Price. Prices of Products do not include sales, withholding, general excise, business and occupation, or similar taxes. Buyer shall pay such taxes, if imposed, either directly or when invoiced by EC America, or shall supply appropriate tax exemption certificates in a form satisfactory to EC America. In the event that any such taxes paid by Buyer are recoverable by EC America, EC America shall reimburse Buyer within thirty (30) days of such recovery, provided that Buyer has previously provided payment receipts for such paid taxes to EC America to substantiate its claim.
- 3.7. Buyer's Responsibility for Permits, Import Duties, Etc. Unless EC America's agreement with the applicable manufacturer provides otherwise, Buyer shall be responsible, at its own expense, for obtaining all necessary import and other permits that are required under applicable law and for the payment of any and all taxes and duties imposed on the delivery, importation, sale or license of the Products.
- 3.8. Product Delivery. Unless stated otherwise in a quote or other exhibit from EC America, delivery of Products shall be F.O.B. manufacturer point of shipment, upon transfer to a common carrier and Buyer shall assume all risk of loss or damage to Products while in transit. Buyer shall be responsible for all costs of shipping, transportation, freight, insurance, taxes and similar items. Absent shipping instructions to the contrary, EC America shall select methods and routes for shipment, but shall not assume any liability in connection with shipment or constitute any carrier as its agent.
- 3.9. Payments. Payments to EC America shall be due and payable thirty (30) days after invoice date. All payments shall be in U.S. dollars and shall not be deemed to have been made until the payment is received by EC America in McLean, Virginia, USA, or its remittance is made to the bank account designated by EC America. EC America reserves the right to charge interest on all overdue payments at the rate of one and one half percent (1.5%) per month, or part thereof (eighteen percent (18%) per year, calculated monthly), or any lesser amount that is the maximum permitted by applicable law.
- 3.10. Buyer's Risk of Customer Non-Payment. The risk of non-payment or payment in arrears by a Customer shall be borne solely by Buyer and shall not modify or otherwise affect Buyer's obligation to pay EC America any amounts owed under these terms and conditions.
- 3.11. Product Pricing for Resale. Buyer shall be free to determine its own list prices for Products to be resold to its Customers. Any list prices published or provided by EC America are suggestions only.
- 3.12. Product Availability. In the event required to do so by a manufacturer, EC America may change, increase, or decrease the number and/or type of Products made available to its Buyers, and to discontinue the supply and/or support of any or all Products.
- 3.13. Partial Shipments of Incomplete Orders. EC America shall, at Buyer's request, make partial shipments on account of Buyer's Orders, in which case payment therefor shall be made to correspond to the occurrence of actual shipment, and payment for such partial shipments shall be due and payable on exactly the same terms and conditions provided herein. Subsequent delays in shipment or delivery of any other installment shall not relieve Buyer of its obligation to accept delivery and remit payment for the remaining items in the Order(s).
- 3.14. Product Allocations in the Event of Shortages. Should orders for Products exceed the inventory a manufacturer makes available to EC America, EC America may not be able to meet Buyer's requested delivery date(s) for Products. In any event, EC America shall not be liable for any damages, direct, consequential, special or otherwise to Buyer or to any other person for failure to deliver or for any delay or error in delivery of Products for any reason whatsoever.
- 3.15. Product Return Policy. Product returns shall be governed by the Product manufacturer's warranty and return material authorization policies in effect at the time of Product return.
- 3.16. Credit Terms. Buyer shall furnish to EC America all financial information reasonably requested by EC America for the purpose of establishing Buyer's credit limit. Buyer agrees that EC America shall have the right to decline to extend credit to Buyer and to require that the applicable purchase price be paid prior to shipment. Buyer shall promptly notify EC America of all changes to Buyer's name, address, or of the sale of all or substantially all of its assets. Buyer shall not deduct any amounts owing from any EC America invoice without EC America's express written approval, which approval shall be contingent upon Buyer providing all supporting documentation for such deduction as required by EC America. If Buyer fails to make timely payment of any amount invoiced hereunder, EC America shall have the right, in addition to any and all other rights and remedies available to EC America at law or in equity, to immediately revoke any or all credit extended, to delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Buyer. Any obligation of EC America under these terms and conditions to deliver Products on credit terms shall terminate without notice if Buyer files a voluntary

petition under a bankruptcy statute, or makes an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Buyer, or if a receiver or trustee is appointed to take possession of the assets of Buyer.

#### 4. Warranties and Indemnities

- 4.1. Disclaimer of Warranty. EC AMERICA EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES OR CONDITIONS NOT SPECIFICALLY SET FORTH HEREIN, INCLUDING IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING OR USAGE OF TRADE.
- 4.2. Buyer Acknowledgment Re: Product Representations, etc. Buyer acknowledges that EC America does not, and unless allowed by the Manufacturer Agreement, Buyer shall not represent or warrant to any third party, including but not limited to any other Buyers, Customers and any end-user licensees that the operation of the Products: (a) will meet Customer's requirements; (b) will be error free; or (c) will not be interrupted by reason of defect therein or by reason of fault on the part of EC America or its manufacturers or licensors.
- 4.3. Indemnity for Buyer's Negligence and Misrepresentation. Buyer shall indemnify and hold EC America harmless from any and all claims, damages and expenses of any kind or nature, together with legal fees and expenses incurred in connection therewith arising out of the negligence, misrepresentation or other misconduct of Buyer, or arising from any acts of commission or omission by Buyer with respect to its sale of Products hereunder.
- 4.4. Limitation of Liability. IN NO EVENT WILL EC AMERICA, ITS AFFILIATES OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR OTHER DAMAGES WHETHER OR NOT EC AMERICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. EC AMERICA'S ENTIRE LIABILITY UNDER, FOR BREACH OF, OR ARISING OUT OF, THESE TERMS AND CONDITIONS, IS LIMITED TO A REFUND OF THE FEES PAID FOR THE PARTICULAR PRODUCT OR SERVICE THAT GAVE RISE TO THE CLAIM. IN NO EVENT SHALL EC AMERICA BE LIABLE FOR BUYER'S OR ITS CUSTOMERS' COST OF PROCURING SUBSTITUTE GOODS.

#### 5. General

- 5.1. Choice of Law. These terms and conditions shall be interpreted under the laws of the Commonwealth of Virginia, without regard to that body of law controlling conflicts of law. In the event of any dispute or claim arising hereunder, the Parties hereby submit to the jurisdiction of the federal and state courts of Virginia, as applicable.
- 5.2. Invalidity. If any one or more of the provisions, or portions of provisions, of these terms and conditions shall be deemed by any court of competent jurisdiction or governmental authority to be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions, or portions of provisions, contained herein shall not be in any way affected or impaired thereby. The Parties hereto agree to replace any such invalid, illegal or unenforceable provision, or portion of provision, with a new provision that has a similar economic effect.
- 5.3. Export Law Compliance. Buyer agrees to comply with all applicable United States export control laws, and regulations, as from time to time amended, including without limitation, the laws and regulations administered by the U.S. Department of Commerce and the U.S. Department of State. Buyer has been advised that Products are subject to the U.S. Export Administration Regulations. Buyer shall not export, import or transfer Products contrary to U.S. or other applicable laws, whether directly or indirectly, and will not cause, approve or otherwise facilitate others such as agents or any third parties in doing so. Buyer represents and agrees that neither the U.S. Bureau of Export Administration nor any other federal agency has suspended, revoked or denied Buyer's export privileges. Buyer agrees not to use or transfer the Products for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. Government by regulation or specific license. Buyer acknowledges it is Buyer's responsibility to comply with any and all export and import laws and that EC America has no further responsibility after the initial sale to the Buyer within the original country of sale.
- 5.4. Assignment. Assignment is prohibited without the express written consent of the other Party; except that EC America may assign any of its rights or obligations hereunder (including, without limitation, rights and duties of performance) to any of its affiliates. Any assignment in violation of this provision will be null and void.
- 5.5. Entire Agreement. These terms constitute the complete agreement between the Parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter hereof. These terms may not be modified or amended except in writing signed by a duly authorized representative of each Party. No other act, document, usage or custom shall be deemed to amend or modify these terms.