

# ENVO, INC. TERMS AND CONDITIONS OF SALE

1. **ENTIRE AGREEMENT.** These Terms and Conditions of Sale ("Agreement") shall constitute the complete and exclusive statement of the terms of agreement between Envo, Inc. ("Envo") and the entity identified on the purchase order to which the Agreement is attached or otherwise referenced ("Purchaser") unless different, contradictory or additional terms and conditions are agreed to in a writing signed by authorized representatives of both Parties. The Agreement applies to the purchase and sale of products and services listed on the applicable Envo price list ("the Products"). Envo's performance is expressly conditioned on Purchaser's assent to the Agreement.

2. **PRODUCTS.** Envo reserves the right to modify or change at any time, and, at its discretion, to inform Purchaser of any modifications or changes to the Products that affect form, fit, function, or performance prior to shipment. Envo will be free to substitute components or modify manufacturing processes and make other changes in the Product(s) and/or Product specifications at any time and without any prior notice.

3. **SOFTWARE LICENSE.** Each Product is subject to either Envo's shrink-wrap or click-wrap end-user software license agreement, which is incorporated herein by reference. If there is any inconsistency between this Agreement and the applicable end-user license agreement ("EULA"), the EULA will prevail. Purchaser agrees to abide by the applicable EULA.

4. **PURCHASE ORDERS; ALLOCATION.** Orders are subject to written acceptance by Envo and shipment schedules established in accordance with Product availability and Purchaser's credit status; however Envo shall not have any liability for failure to meet a delivery date. If Envo's order acknowledgment changes any of Purchaser's purchase order requirements, Purchaser will be deemed to agree to the changes unless written objection is received by Envo by the end of the next business day. Envo reserves the right to allocate inventories and current production in its sole discretion.

5. **PRICE; PAYMENT TERMS; INTEREST.** The price paid by Purchaser shall be that stated on Envo's sales order acknowledgment. Unless otherwise stated on a quotation, quotations are valid for thirty (30) days from the date issued. All prices are in U.S. dollars, and all payments are to be made in U.S. dollars, free of any restrictions. Standard payment terms are net thirty (30) days from the date of invoice, but Envo reserves the right to require alternative payment terms, including payment in advance, irrevocable letter of credit, or C.O.D. Payment is not conditioned upon the Products meeting any acceptance testing procedures Purchaser may have. Envo reserves the right to charge Purchaser interest on any delinquent balance, computed on a daily basis for each day that the payment is delinquent at the lesser of eighteen percent (18%) per year or the maximum rate permitted by law. Envo reserves the right to refuse shipment to Purchaser if Purchaser is delinquent in making payments.

6. **TAXES.** Except as otherwise required by applicable law or agreed to in writing by the parties, Purchaser is responsible for paying or reimbursing Envo for all taxes or providing Envo with a tax exemption certificate acceptable to the taxing authorities.

7. **SHIPMENT.** Products shall be shipped from place of manufacture or Envo's warehouse, freight collect or pre-paid and added to the invoice. Title to hardware and all risk of loss passes to Purchaser upon delivery to a carrier at the shipment point. Title to software remains with Envo at all times. Where permitted by law, Purchaser hereby grants to Envo a purchase money security interest covering each shipment of Products made hereunder (and any proceeds thereof) in the amount of Envo's invoice for such shipment until payment in full is received by Envo.

8. **EXPORTER AND IMPORTER OF RECORD.** For international shipments, Purchaser or its properly authorized agent or freight forwarder shall be exporter of record from the United States. Purchaser shall be the importer of record and is responsible for fulfilling quota terms, obtaining import licenses, paying import license or permit fees, duties and customs fees, and any other governmental or import taxes or fees, and preparing and Envo Confidential submitting all required documentation in connection with

importing the Products.

9. **CHANGES TO PURCHASE ORDER; CANCELLATION.** Any and all changes Purchaser makes to its purchase order must be agreed to by Envo in writing. Any cancellation of a purchase order will result in a cancellation penalty of twenty-five percent (25%) of the amount of the invoice.

10. **RESCHEDULING.** Purchaser may reschedule up to fifty percent (50%) of an accepted order one time, upon at least ten (10) days' prior written notice to Envo before the scheduled shipment date. The rescheduled date cannot be later than 30 days from the original schedule. Rescheduled orders may not be cancelled or rescheduled again. Any prepaid, but unused professional services (i.e., training and/or consulting services) will expire twelve (12) months after the purchase date.

11. **LIMITED WARRANTIES; WARRANTIES EXCLUSIVE.** Envo warrants only to Purchaser that the hardware Products purchased hereunder will substantially conform to Envo's published specifications for such Product for twelve (12) months from the date of shipment by Envo. The software warranty (if any) is as set forth in the EULA. Any Product that is damaged, abused, modified, altered, not maintained in accordance with Envo's standards or missing its serial code, or returned in any manner that is not in compliance with Envo's then current RMA policies, is not covered by this warranty. Envo's sole obligation under this express warranty shall be, at Envo's option and expense, to repair or replace the Product. In the event of a breach of the Hardware warranty within thirty (30) days of shipment, Envo will replace any non-compliant Product with a new Product within one business day of notice via our RMA procedure. Purchaser may purchase an extension of this next business day protection through a separate support and service agreement. In the absence of such a support and service agreement, in the event of a breach of the Hardware warranty thirty or more days after shipment but within the twelve month warranty period, Envo will repair or replace any non-compliant Product and return in operable condition to the End User within forty-five (45) days of notice and receipt of the non-compliant Product via our RMA procedure. Purchaser must contact Envo's Technical Assistance Center ("TAC") within the applicable warranty period to obtain a Return Material Authorization (RMA) number. In order to obtain warranty services, dated proof of purchase may be required by Envo in its sole discretion. Products may not be returned without an RMA number. Access to Envo's TAC for any and all questions, consultation, deployment assistance, or problem reports shall be provided only pursuant to a separate service and support agreement.

EXCEPT AS EXPRESSLY PROVIDED IN HEREIN OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, ALL PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTY WHATSOEVER, AND ENVO AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED, AND STATUTORY INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND FITNESS FOR A PARTICULAR PURPOSE. ENVO ALSO MAKES NO WARRANTY REGARDING NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS.

12. **LIMITATION OF LIABILITY.** EXCEPT FOR BODILY INJURY, NEITHER ENVO NOR ITS SUPPLIERS OR LICENSORS WILL NOT BE LIABLE WITH RESPECT TO ANY PRODUCT OR OTHER SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) ANY AMOUNTS IN EXCESS IN THE AGGREGATE OF THE AMOUNTS PAID TO ENVO UNDER THE PURCHASE ORDER IN WHICH THESE TERMS ARE REFERENCED DURING THE TWELVE MONTH PERIOD PRIOR TO DATE THE CAUSE OF ACTION FIRST AROSE OR (II) ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR (III) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES. NEITHER ENVO NOR ITS SUPPLIERS OR LICENSORS WILL HAVE ANY LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND ITS REASONABLE CONTROL OR FOR ANY ALLOCATION OF PRODUCTS BETWEEN ITS CUSTOMERS IN THE EVENT OF A

SHORTAGE.

THIS SECTION 12 SHALL NOT BE DEEMED TO PRECLUDE ANY LIABILITY WHICH, UNDER APPLICABLE PRODUCTS LIABILITY LAW, CANNOT BE PRECLUDED BY CONTRACT.

13. **EXPORT COMPLIANCE.** Purchaser agrees not to export, either directly or indirectly, any Product purchased or licensed hereunder without first obtaining any required license or other approval from the U.S. Department of Commerce or any other agency or department of the United States Government. If Purchaser exports any such Product from the United States or re-exports it from a foreign destination, Purchaser shall ensure that the export/re-export or import of the Product is in compliance with all laws, regulations, orders or other restrictions of the United States and the appropriate foreign government.

14. **FORCE MAJEURE.** Envo shall not be liable to Purchaser for any alleged loss or damages resulting from delays in performance (including loss or damages resulting from delivery of the Products being delayed) caused by acts of Purchaser, acts of civil or military authority, governmental priorities, earthquake, fire, flood, epidemic, quarantine, energy crisis, strike, labor trouble, component shortage, war, riot, accident, shortage, delays in transportation, or any other causes beyond Envo's reasonable control.

15. **WAIVER; SEVERABILITY.** A waiver of any default hereunder or of any provision of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other provision, but shall apply solely to the instance to which such waiver is directed. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, a modified provision shall be substituted which carries out as nearly as Any dispute arising from or relating to the subject matter of this Agreement that cannot be resolved thereby within a period of thirty (30) days after written notice of a dispute has been given by one party hereunder to the other, shall be finally settled by arbitration in San Francisco, Washington, using the English language in accordance with the Arbitration Rules and Procedures of JAMS/Endispute ("JAMS") then in effect, by an arbitrator with substantial experience in resolving complex commercial contract disputes, who will be chosen from the appropriate list of JAMS arbitrators. If the parties cannot agree upon the identity of an arbitrator within fifteen (15) days following the Arbitration Date, then an arbitrator shall be selected on an expedited basis in accordance with the Arbitration Rules and Procedures of JAMS. Any arbitrator so selected shall have substantial experience in the networking industry. The arbitrator shall have the authority to grant specific performance and to allocate between the parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrator may determine. The prevailing party in the arbitration shall be entitled to receive reimbursement of its reasonable expenses (including reasonable attorneys' fees, expert witness fees and all other expenses) incurred in connection therewith. Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, each party shall have the right to institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages shall only be awarded by the arbitrator.

The parties consent to exclusive jurisdiction and venue in the United States Federal Courts located in the Washington State.

17. **SURVIVAL.** The following provisions shall survive the termination of this Agreement or the relationship with Purchaser: Entire Agreement; Software License; Price; Payment Terms; Interest; Shipment; Taxes; Exporter and Importer of Record; Limited Warranties; Warranties Exclusive; Patent and Copyright Infringement; Limitation of Liability; Export Compliance; Force Majeure; Waiver; Severability; and Governing Law.