



## GENERAL TERMS AND CONDITIONS OF SALE

Agilysys, Inc. (hereinafter "Seller") is a value-added distributor and reseller of computer systems (including, but not limited to, hardware, software, documentation, media) ("Products") and value-added services, including but not limited to design, engineering, installation, integration, maintenance, consulting and professional services, which services may be provided by Seller's Professional Services Group ("PSG Services"), or which services may be resold by Seller and provided by Seller's supplier ("Third Party Services"). Collectively, PSG Services and Third Party Services are referred to herein as "Services". These General Terms and Conditions of Sale (hereinafter "Terms and Conditions") shall apply to all sales of Products and Services by Seller and its subsidiaries and affiliates to Buyer. Seller's manufacturers, suppliers, vendors, service providers and licensors are collectively referred to as "Suppliers".

**1. Entire Agreement.** Notwithstanding any different or additional terms or conditions contained in Buyer's purchase order or other communication, Seller accepts Buyer's order only on the condition that Buyer expressly accepts these Terms and Conditions. In the absence of Buyer's acceptance hereof, Seller's commencement of performance or Seller's acknowledgment of Buyer's purchase order shall be for Buyer's convenience only and shall not be construed as Seller's acceptance of any of Buyer's terms. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these terms, but Seller hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. Buyer's acceptance of any Products and/or Services shall be deemed to be acceptance of these Terms and Conditions. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Products and/or Services. Any notice by Buyer objecting to these terms must be in a writing separate from any form purchase order. Seller's failure to object specifically to provisions contained in any communication from Buyer shall not be deemed a waiver of these Terms and Conditions. Any amendment, waiver or other alteration of these Terms and Conditions by Seller shall be effective only if made in a writing signed by a designated officer or director of Seller.

**2. Quotations; Orders.** Seller's written price quotations are valid for the length of time, if any, indicated on the quotation; if no length of time is specified, quotations are subject to change at any time after issuance due to Supplier price or discount changes. Unless otherwise specified, prices do not include shipping, handling, special packing and insurance charges. Unless otherwise mutually agreed by the parties in writing, Seller shall pre-pay and add to Buyer's invoice all freight, handling, delivery, special packing and insurance charges for shipments of Products and Buyer agrees to pay for such charges. Upon receipt of notice of a price change from Seller, Buyer shall promptly notify Seller in writing whether Buyer wishes to accept the new quotation or cancel the order. All orders for Products and/or Services will be evidenced by Buyer's firm purchase orders, which must, at a minimum, identify the Products and/or Services being ordered and the quantity of such Products, request a delivery date, and provide shipping instructions and shipping address. All orders for Products and Services are subject to approval by Seller at its corporate headquarters in Cleveland, Ohio.

**3. Statements of Work.** Sales of certain Services may require a mutually agreed-upon written statement of work and, if applicable, specifications provided by Buyer. For PSG Services, Seller and Buyer will mutually agree upon and sign a written statement of work, which, upon such signature, shall be incorporated herein by reference ("Statement of Work"). To the extent any terms of the Statement of Work conflict with these Terms and Conditions, the Terms and Conditions shall govern. To the extent any terms of the Statement of Work are additional terms, the Statement of Work shall govern. For Third Party Services, Buyer acknowledges and agrees that the Supplier may have a service contract that Seller may be obligated to provide to and/or obtain Buyer's acceptance of or signature on prior to the sale of such Third Party Services. Buyer represents and warrants that it owns and/or has the right to use any intellectual property contained in any specifications provided to Seller and/or its Suppliers or subcontractors. Buyer agrees to indemnify and hold harmless Seller, its Suppliers and subcontractors (which parties shall be third party beneficiaries of this Section 3 from any third party claims of infringement of intellectual property rights that may arise out of Buyer's specifications (including, but not limited to, reasonable attorney fees, court costs and costs of investigation and defense) provided to Seller and/or its Suppliers or subcontractors.

- 4. Software.** When the sale of Product includes software, Buyer acknowledges and agrees that the Supplier's standard license agreement shall govern Buyer's right to use or sublicense the software and that Seller may be obligated to provide to and/or obtain Buyer's acceptance of or signature on prior to the sale of such software. The software license may also be in the form of a "click-to-accept" license or "shrink-wrap" license.
- 5. Cancellation and Rescheduling.** Except for Custom Products (defined below), Buyer may cancel or reschedule orders prior to delivery to the carrier only with Seller's written consent. If Seller consents to the cancellation or re-scheduling of an order in Seller's discretion, Buyer shall pay Seller a restocking fee and reasonable cancellation charges. If Buyer requests an accelerated delivery date, Seller will use its commercially reasonable efforts to meet such request.
- 6. Custom Products.** Custom Products are Products: (i) that are non-franchised for Seller; or (ii) that are ordered based on Buyer's specifications and/or unique requirements; or (iii) for which Seller has no return privileges with its Supplier. Seller shall identify Products as Custom Products on its quotation to Buyer. Custom Products are not eligible for return, cancellation or re-scheduling once Buyer has placed an order with Seller. Buyer assumes full liability for payment of all Custom Products ordered by Buyer, whether in the form of raw materials, work-in-process or finished goods.
- 7. Delivery.** Products are shipped F.O.B. point of origin [*ExWorks Seller's facility*]. Title and risk of loss shall pass to Buyer upon Seller's delivery of Products to the carrier. Unless otherwise mutually agreed in writing, choice of carrier and shipping method and route shall be at Seller's election. Seller shall have the right to deliver all Products covered hereby at one time or in partial shipments from time to time, within the agreed time for delivery. Seller shall not be liable for delays in delivery or for other failure to perform due to causes beyond the reasonable control of Seller, including, but not limited to, force majeure, acts of God, acts or omissions of Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, quarantine restrictions, flood, natural disasters, riot, war, delays in transportation or inability to obtain necessary labor, materials or supplies. In the event of any such delay, the set date of delivery, if any, shall be extended for a reasonable period or the delivery may be canceled at Seller's option.
- 8. Acceptance.** Upon receipt of Products, Buyer agrees to inspect and/or test Products. Inspection or testing shall be completed promptly and in no event later than 10 days after delivery of Products. Products shall be deemed accepted by Buyer unless Buyer provides Seller, within 10 days of the initial inspection period, a written notice specifying all defects or discrepancies in the quality or quantity of Products. Buyer's acceptance of Services shall be addressed in the PSG Statement of Work or Third-Party Services contract, as applicable.
- 9. Payment.** Invoices are due and payable net thirty (30) days from date of invoice. Buyer shall pay (and prices do not include) all sales, use, services, excise, tariffs, duties or similar taxes or charges unless Buyer provides Seller with a valid tax exemption certificate(s). Buyer's outstanding unpaid balances shall be subject to a finance charge of 1-1/2% per month (or such lower rate as may be the maximum permitted by law) until paid in full. Buyer shall also pay Seller's cost of collection (including reasonable attorney's fees) regardless of the manner or method in which the costs are incurred. Payments received from Buyer may be applied by Seller against any obligation owed by Buyer to Seller. Buyer shall not to offset any amounts due to Buyer from Seller against any of Seller's invoices. Seller may refuse or delay shipments if Buyer fails to pay promptly any payments due Seller. All payments must be in U.S. Dollars. All credit memos issued by Seller shall permanently expire one (1) year from the date of issuance.
- 10. Security for Obligations.** To secure the payment of the purchase price of Products sold, Buyer grants Seller a purchase money security interest in all Products sold under this Agreement whether constituting equipment, inventory, goods, fixtures, payment intangibles and/or general intangibles, including all accessions to and replacements thereof, and all proceeds of the foregoing. Buyer authorizes Seller to file one or more financing statements signed only by Seller without Buyer's signature and to use a copy of this Agreement as an exhibit to any financing statement. Upon Seller's request, Buyer shall execute any additional documents, instruments, financing statements or amendments to perfect or continue the security interest created by this Agreement. Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of Ohio from time to time, which remedies shall be cumulative and not exclusive.
- 11. Returns.** Buyer may only return Products with Seller's prior consent. Upon confirmation of right to return, Seller shall issue or cause to be issued a Return Material Authorization. Buyer shall return Products freight prepaid, in accordance with Seller's instructions in original packaging and in good condition, without alteration. Buyer assumes risk of loss for returned Products until receipt by Seller or its Supplier at the designated return location. Upon receipt of returned Products which comply with this Section 11, Seller has the right to issue and Buyer agrees to accept a credit memo in the amount of the value of the returned Products which may be used as a credit toward future purchases for a period of one (1) year after issuance.
- 12. Warranty and Warranty Limitations.** Buyer acknowledges that Seller acts as a distributor/reseller of Products and Third Party Services and that the Supplier of such Products and Third Party Services is responsible to

Buyer, Seller and third parties for all defects, breaches, liability, claims, damages, obligations, costs and expenses (whether legal or equitable) (“hereinafter “Claims”) related to the manufacture, performance and functionality of the Products or provision of Third Party Services. Buyer agrees to look solely to the Supplier of Products and Third Party Services for all Claims arising from breach of Supplier’s warranty for Products and Third Party Services. Seller agrees to transfer, assign or “pass through” to Buyer any transferable warranty made to Seller by Supplier to the extent transferable and permitted by law. **Seller makes no representation, covenant or warranty with respect to the extent or enforceability of Supplier’s warranty.** Seller warrants that PSG Services will be performed in a workmanlike manner and will substantially conform to the agreed to specifications at the time of performance. Seller does not warrant results or achievements of Services. **Seller makes no other warranty, express or implied, with respect to Products or Services.** SELLER DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO (A) THE MERCHANTABILITY OF PRODUCTS, (B) THE FITNESS OF PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER, (C) WHETHER THE USE OF THE PRODUCTS OR SERVICES SHALL BE UNINTERRUPTED OR ERROR FREE, (D) WHETHER THE PRODUCTS OR SERVICES WILL FUNCTION WITHOUT INTERRUPTION OR OTHER MALFUNCTION CAUSED BY THE PROCESSING OF OR OCCURRENCE OF ANY DATE, (E) ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, (F) NONINFRINGEMENT OR (G) TITLE TO SOFTWARE. Buyer’s sole and exclusive remedy for nonconforming Products and Services shall be, at Seller’s option, the replacement or repair of Products or re-performance of Services at Seller’s cost or Seller’s refund of the purchase price of the applicable Products and/or Services. No repair, replacement or re-performance shall extend any warranty period.

**13. Limitation of Liability.** IN NO EVENT SHALL SELLER’S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE PRODUCTS AND/OR SERVICES.

**14. Limitation of Damages.** BUYER SHALL IN NO EVENT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT, PROMOTIONAL AND/OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION AND/OR LOSS OF CUSTOMERS OR DATA.

**15. Supplier Restrictions as to Use of Products.** Buyer acknowledges that Products are not designed for and are not permitted to be used in connection with the manufacture, construction or operation of life support systems, human implantation, medical devices, nuclear facilities, nuclear systems or weapons, aviation, mass transit or any applications where failure or malfunction could lead to possible loss of life or catastrophic property damage. Buyer acknowledges this notice of Supplier’s restrictions with regard to the use of Products. If Buyer or its customer uses Products for any of these applications, Buyer agrees to indemnify, defend and hold harmless Seller, its subcontractors and Suppliers (which parties are third party beneficiaries of this Section 15) from any and all claims, damages or liability (including, but not limited to, reasonable attorneys fees, court costs, and costs of investigation and defense) arising from such unauthorized use of Products.

**16. Intellectual Property.** Seller shall have no liability or obligation in connection with any claims of infringement by Products or Third Party Services to any patent, trademark, copyright, trade secret or other proprietary right or information.

**17. Advice.** Unless itemized in a Statement of Work for PSG Services, if technical advice is offered or provided in connection with the sale of any Products or Services, it is provided as an accommodation to Buyer, without charge, and Seller does not warrant and has no responsibility or liability whatsoever for the content of or use of such advice.

**18. Confidentiality.** Both parties acknowledge that, by reason of their relationship, they may have access to and/or disclose certain information and materials concerning the business, plans, products and customers of each other which is confidential and of substantial value to the other party, whether disclosed in writing, verbally or by its nature the receiving party knows or should know the confidential nature of the information (“Confidential Information”), which value would be impaired if such information were disclosed to third parties. The term Confidential Information shall not include information which is: (a) in the public domain other than by a breach of this Agreement by the receiving party; or (b) rightfully received from a third party with no duty of confidentiality; or (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; or (d) independently developed by employees, agents or consultants of the receiving party; or (e) generally made available to third parties by the disclosing party without restriction on disclosure. The parties hereto agree to maintain as confidential and not to disclose any Confidential Information learned by virtue of the parties’ business relationship to any third party or use any Confidential Information for purposes other than performance of

its obligations hereunder. The parties agree that this obligation of confidentiality shall survive termination of this Agreement.

**19. Compliance with Export Laws; Foreign Corrupt Practices Act.** Buyer agrees to comply with all U.S. export, import and antiboycott laws and with the United States Foreign Corrupt Practices Act. Buyer agrees not to, and agrees to inform its customers in writing that they may not sell, market, export, transfer, or re-export Products (including software with encryption), Services, technical data or technology to any restricted country or to any company, individual or governmental entity listed in the Table of Denial Orders published from time to time by the U.S. Government (called denied parties). If it exports any Products, Buyer will be the exporter of record and will obtain any licenses or authorizations from the U.S. Department of Commerce or the U.S. Department of State required for the export or re-export of any Products (or encrypted Products), Services, technical data or technology. Buyer agrees that its employees and agents will not offer, pay, promise to pay, give or promise to give any money or anything of value, directly or through third parties, to any government official, political party, political official, candidate for political office or to any other person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, paid, given or promised, directly or indirectly, for purposes of influencing any act or decision of any of the foregoing persons or entities or inducing any of the foregoing persons or entities to use his, her or its influence with a government entity or instrumentality to affect or influence any act or decision of such government entity or instrumentality. Buyer agrees to indemnify, defend and hold harmless Seller and its Suppliers from all losses, claims and damages incurred (including, but not limited to, reasonable attorneys fees, court costs, and costs of investigation and defense) by Seller and its Suppliers because of Buyer's failure to comply with this Section 19.

**20. Government Contracts.** In addition to these Terms and Conditions, Products purchased in support of Buyer's U.S. Government contract shall be governed by those Federal Acquisition Regulations or Defense Federal Acquisition Regulations ("FARS" and "DFARS") which pertain to the sale of "commercial items" (as defined in the FARS or DFARS, as the case may be). No other FARS or DFARS shall form a part of these Terms and Conditions and Seller does not agree to any such additional FARS or DFARS.

**21. Disputes.** All unresolved disputes concerning or in connection with Products and/or Services shall be resolved in the state Court of Common Pleas of the State of Ohio, Cuyahoga County. Buyer consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. Buyer expressly waives its right to trial by jury. No action or other claim, regardless of form, arising out of or in any way connected with or related to Products and/or Services, may be brought by Buyer more than one (1) year after the cause of the action or claim has accrued.

**22. General.** All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Seller and Buyer. Buyer agrees that its conduct and use or resale of Products sold by Seller shall be in compliance with all applicable laws. These Terms and Conditions are not assignable by Buyer without Seller's prior written consent. Facsimile signatures or other reliable means of authentication by which Buyer signifies its assent to these Terms and Conditions shall be effective to bind Buyer. The waiver by Seller of any breach or default shall not be deemed to be a waiver of any later breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or of any other remedy at any time. If any provision or portion of this Agreement is held to be invalid, illegal, unconscionable or unenforceable, the other provisions and portions shall not be affected. The headings are used for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement. Any clerical errors are subject to correction. This Agreement shall be governed by the laws of the State of Ohio and incorporates the terms of the Uniform Electronic Transactions Act as enacted in Sections 1306.01 et. seq. of the Ohio Revised Code, including, but not limited to, the definitions of "Electronic Record", "Electronic Signature", and "Contract", whether or not capitalized herein. All shipping terms shall be interpreted in accordance with INCOTERMS 2000. This Agreement shall not be governed by the UN Convention on the International Sale of Goods.