



VARIEL TECHNOLOGY, LLC. TERMS AND CONDITIONS OF SALE

INTRODUCTION

THE TERMS AND CONDITIONS WHICH FOLLOW (THE "TERMS OF SALE") CONTROL YOUR LEGAL RIGHTS WITH RESPECT TO ALL PRODUCTS PURCHASED FROM VARIEL TECHNOLOGY, LLC (VARIEL). ALL PRODUCTS ARE SOLD BY VARIEL TO YOU (THE "CUSTOMER"). YOU MAY HAVE ADDITIONAL RIGHTS UNDER THE LAWS OF YOUR STATE. BY ACCEPTING DELIVERY OF PRODUCTS PURCHASED FROM VARIEL, YOU AGREE TO BE BOUND BY AND ACCEPT THESE TERMS OF SALE. VARIEL RESERVES THE RIGHT TO ALTER THESE TERMS OF SALE AT ANY TIME, WITHOUT PRIOR NOTICE TO CUSTOMERS.

OTHER DOCUMENTS DO NOT APPLY

THESE TERMS AND CONDITIONS MAY NOT BE ALTERED, SUPPLEMENTED, OR AMENDED BY THE USE OF ANY OTHER DOCUMENT. ANY ATTEMPT TO ALTER, SUPPLEMENT OR AMEND THIS DOCUMENT OR TO ENTER AN ORDER FOR PRODUCTS WHICH IS MADE SUBJECT TO ADDITIONAL OR ALTERED TERMS AND CONDITIONS WILL BE NULL AND VOID, UNLESS OTHERWISE AGREED TO IN A WRITTEN AGREEMENT SIGNED BY BOTH THE CUSTOMER AND AN AUTHORIZED REPRESENTATIVE OF VARIEL.

GENERAL WARRANTY

ALL VARIEL PRODUCTS ARE SOLD SUBJECT TO LIMITED WARRANTIES. PARTICULAR VARIEL PRODUCTS MAY BE SOLD WITH THE ADDITION OF DIFFERENT WARRANTIES.

MANY VARIEL PRODUCTS CONTAIN SOFTWARE, FIRMWARE, AND OTHER PROPRIETARY INTELLECTUAL PROPERTY OWNED BY VARIEL AND/OR THIRD PARTIES. PARTICULAR VARIEL PRODUCTS MAY BE SOLD WITH ADDITION OF DIFFERENT SOFTWARE LICENSE TERMS. VARIEL RESERVES THE RIGHT TO MODIFY OR ALTER ITS WARRANTIES AT ANY TIME, WITHOUT NOTICE TO THE CUSTOMER. PLEASE CAREFULLY REVIEW VARIEL'S WARRANTY AND RMA SECTION TO LEARN MORE ABOUT THE PROVIDED PRODUCT WARRANTIES.

DISCLAIMER OF WARRANTIES

EXCEPT AS PROVIDED IN THE WARRANTY STATEMENTS SET OUT ABOVE, OR IN WARRANTIES PROVIDED WITH VARIEL PRODUCTS, SPECIFIED IN THE WARRANTY AND RMA SECTION, VARIEL MAKES NO OTHER WARRANTIES, AND SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES. THE WARRANTY STATEMENTS SET OUT ABOVE, AND THE WARRANTIES PROVIDED WITH VARIEL PRODUCTS, ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE.

LIMITATION OF LIABILITY AND REMEDIES

IN NO EVENT WILL VARIEL OR ITS SUBSIDIARIES, AFFILIATES, SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING:

ACTUAL LOSS OR DIRECT DAMAGE THAT IS NOT LISTED IN THE PARAGRAPH ABOVE; DAMAGES FOR LOSS OF DATA, OR SOFTWARE RESTORATION; DAMAGES RELATING TO RESELLER'S PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES (I.E., "COST OF COVER"); OR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING DOWNTIME COSTS OR LOST PROFITS). THE REMEDIES IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

PRICES

PRICES AND SHIPPING CHARGES ARE PROVIDED ON CUSTOMER'S QUOTATION AND/OR ORDER FORM. ONLY THOSE CUSTOMERS RESIDING IN THE STATE OF CALIFORNIA WILL HAVE SALES TAX ADDED TO THEIR ORDERS. UNLESS CUSTOMER PROVIDES VARIEL WITH A VALID GOVERNMENT OR NON-PROFIT TAX EXEMPTION CERTIFICATE, VARIEL WILL WITHHOLD SALES TAX WHERE APPLICABLE. EVEN IF VARIEL DOES NOT WITHHOLD SALES TAX, CUSTOMER MAY BE RESPONSIBLE TO PAY SALES TAX IN ITS STATE, COUNTY, OR MUNICIPALITY.

TERMS OF PAYMENT

TERMS OF PAYMENT WILL BE ESTABLISHED AT VARIEL'S DISCRETION. VARIEL MUST RECEIVE PAYMENT PRIOR TO ITS ACCEPTANCE OF CUSTOMER'S ORDER. DEPENDING ON CUSTOMER'S CREDIT HISTORY, PAYMENT MAY BE MADE BY WIRE TRANSFER, COMPANY CHECK, NET TERMS OR CREDIT CARD. CUSTOMER IS REQUIRED TO PAY SHIPPING AND HANDLING.

IN THE EVENT OF A CALCULATION ERROR IN THE TOTAL CHARGE, VARIEL WILL NOTIFY THE CUSTOMER BY TELEPHONE AND/OR EMAIL THAT THE TOTAL CHARGE HAD TO BE RECALCULATED. UPON NOTIFICATION, VARIEL ASKS THE CUSTOMER TO AGREE ON THE NEW CHARGE. IF THERE WAS AN OVERCHARGE, VARIEL PAYS BACK THE CUSTOMER THE DIFFERENCE IN THE FORM OF A CREDIT. IF ADDITIONAL PAYMENT IS REQUIRED AND CUSTOMER AGREES, VARIEL WILL ADJUST THE CHARGES ACCORDINGLY. IF THE CUSTOMER DOES NOT AGREE TO THE NEW TOTAL CHARGE, THE CUSTOMER MAY CANCEL THE ORDER.

ORDERS ARE NOT BINDING UPON VARIEL UNTIL ACCEPTED BY VARIEL.

ANY QUOTATION PROVIDED BY VARIEL WILL BE BINDING FOR THE TIME PERIOD IDENTIFIED IN THE QUOTATION. IF NO TIME PERIOD IS IDENTIFIED, THE QUOTATION WILL BE VALID FOR 48 HOURS AFTER IT IS ISSUED.

VARIEL IS NOT RESPONSIBLE FOR TYPOGRAPHICAL MISTAKES, INCLUDING BUT NOT LIMITED TO MISTAKES AFFECTING PRICES QUOTED FOR PRODUCTS OFFERED THROUGH VARIEL. IF CUSTOMER PAYS USING A CREDIT CARD, CUSTOMER'S ORDER IS SUBJECT TO APPROVAL OF THE BANK OR OTHER FINANCIAL INSTITUTION THAT ISSUED CUSTOMER'S CARD. VARIEL WILL NOT BE LIABLE IF THE BANK REFUSES TO APPROVE CUSTOMER'S PURCHASE OR REFUSES TO ACCEPT OR HONOR CUSTOMER'S CREDIT CARD. IF CUSTOMER'S CARD AND PURCHASE ARE ACCEPTED AND APPROVED, CUSTOMER AGREES TO PAY ITS OBLIGATIONS TO ITS CREDIT CARD ISSUER AS REQUIRED UNDER THE TERMS OF CUSTOMER'S AGREEMENT WITH THE ISSUER.

DISCREPANCIES

UPON RECEIPT OF INVOICE, CUSTOMER HAS THREE (3) DAYS TO PHONE, FAX, E-MAIL OR ANY OTHER OVERNIGHT METHOD TO REPLY IN WRITING AS TO ANY DISCREPANCIES. CUSTOMER SHALL BE RESPONSIBLE FOR A 30% RESTOCKING FEES FOR REFUSED ORDERS IN ADDITION TO ALL APPLICABLE FREIGHT CHARGES. NO FURTHER ORDERS SHALL BE HONORED UNLESS ALL CHARGES ARE PAID IN FULL.

RETURNED CHECKS

CUSTOMERS WITH CHECKS RETURNED BECAUSE OF INSUFFICIENT FUNDS WILL BE ASSESSED A \$200 SERVICE CHARGE AND REQUIRED TO IMMEDIATELY WIRE TRANSFER THE AMOUNT DUE INTO VARIEL'S BUSINESS ACCOUNT. ALL LEGAL AND ATTORNEY FEES INCURRED AS A RESULT OF SUCH DISPUTES SHALL BE THE SOLE RESPONSIBILITY OF THE CUSTOMER.

CANCELLATION POLICY

ONCE AN ORDER IS SUBMITTED TO VARIEL, THE ORDER WILL BE PROCESSED AND YOU WILL BECOME FINANCIALLY LIABLE FOR THE ORDER. BASED ON YOUR PREVIOUSLY AGREED UPON FINANCIAL ARRANGEMENTS WITH VARIEL SUCH AS: WIRE TRANSFER, COMPANY CHECK, NET TERMS OR CREDIT CARD, YOU WILL THEN BE BILLED \ INVOICED APPROPRIATELY. IF YOU PROVIDED VARIEL WITH A CREDIT CARD, YOUR ACCOUNT WILL BE CHARGED IMMEDIATELY. WHEN THE CUSTOMER'S ORDER HAS BEEN PROCESSED AND ABOUT TO BE SHIPPED, ANY ORDER CANCELLATION WILL IMPOSE A 30% RE-STOCKING FEE. ALL SALES ARE FINAL.

SHIPMENT TERMS

VARIEL WILL SHIP TO CUSTOMER ADDRESSES IN THE 50 UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, AND CANADA. VARIEL IS UNABLE TO SHIP OUTSIDE THE UNITED STATES AND CANADA, OR TO APO AND FPO BOXES. VARIEL WILL NOT SHIP TO POST OFFICE BOXES. PRICES DO NOT INCLUDE CHARGES FOR SHIPPING, HANDLING, OR RETURNS PROCESSING CHARGES (SEE RETURNS). CUSTOMER AGREES TO PAY THE FULL SHIPPING CHARGES. TITLE AND RISK OF LOSS PASS FROM VARIEL TO CUSTOMER UPON SHIPMENT FROM VARIEL OR A VARIEL DESIGNATED DISTRIBUTION FACILITY TO CUSTOMER. CUSTOMER MUST SIGN FOR RECEIPT OF SHIPMENT UNLESS CUSTOMER HAS MADE SPECIAL ARRANGEMENTS WITH THE SHIPPING CARRIER.

VARIEL MAY DELIVER PRODUCTS IN INSTALLMENTS. ANY DELIVERY OR SHIPMENT DATE PROVIDED TO CUSTOMER IS VARIEL'S GOOD-FAITH ESTIMATE. CUSTOMER ACKNOWLEDGES THAT VARIEL PRODUCT AVAILABILITY MAY BE LIMITED, AND PARTICULAR PRODUCTS MAY NOT BE AVAILABLE FOR IMMEDIATE DELIVERY. VARIEL WILL NOT BE LIABLE FOR ANY LOSS, DAMAGE, COST, OR EXPENSE RELATED TO ANY DELAY IN SHIPMENT OR DELIVERY.

VARIEL RESERVES THE RIGHT TO SUSPEND SHIPMENT OF PARTICULAR PRODUCTS AT VARIEL'S DISCRETION. VARIEL AGREES TO NOTIFY CUSTOMER IF VARIEL CHOOSES NOT TO SHIP PARTICULAR PRODUCTS WHICH HAVE PREVIOUSLY BEEN ORDERED BY CUSTOMER OR IN THE EVENT SHIPMENT IS DELAYED.

DELIVERY AND FREIGHT DAMAGE

ALL APPROVED ORDERS ARE PROCESSED IMMEDIATELY UNLESS; THE PRODUCT COMPONENTS ARE ON ALLOCATION BY THEIR RESPECTIVE MANUFACTURER \ SUPPLIER. VARIEL WILL MAKE EVERY REASONABLE EFFORT TO PROCESS AND SHIP ALL ORDERS ON TIME; HOWEVER, VARIEL SHALL NOT BE LIABLE FOR LATE OR LOST SHIPMENTS. ALL ITEMS ARE SUBJECT TO COMPONENT AVAILABILITY. ALL ORDERS ARE SHIPPED GROUND AND ALL APPLICABLE CHARGES SHALL BE ADDED TO THE INVOICE. EXPEDITED DELIVERIES ARE OPTIONAL. ALL STORAGE APPLIANCES, COMPUTERS, MONITORS, SERVER AND PERIPHERALS WILL BE CHARGED FREIGHT. FREIGHT MAY BE SUBJECT TO TAX. C.O.D. AND INSURANCE CHARGES MAY BE ADDED TO EACH INVOICE. OCCASIONALLY, MERCHANDISE IS DAMAGED IN TRANSIT. BEFORE SIGNING THE BILL OF LANDING, INSPECT ALL THE CARTONS FOR DAMAGE, BOTH INSIDE AND OUT AND CHECK TO MAKE SURE ALL ITEMS HAVE BEEN RECEIVED AS ORDERED BY THE CUSTOMER. LIST ON THE BILL OF LANDING ANY DAMAGE TO THE MERCHANDISE AND ASK THE CARRIER TO IMMEDIATELY INSPECT THE MERCHANDISE. KEEP THE ORIGINAL PACKAGING FOR INSPECTION BY CARRIER. THE SHIPPING CARRIER IS RESPONSIBLE FOR SUCH DAMAGES. CUSTOMER SHALL BE RESPONSIBLE FOR SUBMITTING ALL REQUIRED CLAIMS TO THE CARRIER. THE CUSTOMER MUST HANDLE ALL DISPUTES WITH THE CARRIER. ALL LEGAL AND ATTORNEY FEES AS A RESULT OF SUCH DISPUTES ARE THE SOLE RESPONSIBILITY OF THE CUSTOMER. VARIEL SHALL CHARGE THE CUSTOMER THE FULL INVOICE AMOUNT OF THE DISPUTED SHIPMENT, AS VARIEL SHALL NOT BEAR THE COST OF DAMAGED PRODUCTS DURING SUCH DISPUTES.

NO RESALE

CUSTOMER (END-USER) AGREES THAT ANY PRODUCTS IT PURCHASES FROM VARIEL ARE PURCHASED FOR THEIR OWN USE AND NOT FOR RESALE PURPOSES. ONLY APPROVED AND AUTHORIZED VARIEL RESELLERS CAN ENGAGE IN THE RESALE OF VARIEL PRODUCTS.

EXPORT CONTROL

ALL PRODUCTS PURCHASED THROUGH VARIEL ARE PURCHASED FOR USE IN THE UNITED STATES AND CANADA ONLY. EXCEPT WHERE SPECIFICALLY AGREED IN THE WARRANTY STATEMENT ACCOMPANYING THE PRODUCT, VARIEL WILL NOT HONOR PRODUCT WARRANTIES FOR UNITED STATES PRODUCTS SUBMITTED FOR REPAIR OR REPLACEMENT OUTSIDE THE UNITED STATES.

CUSTOMER ACKNOWLEDGES THAT PRODUCTS PURCHASED THROUGH VARIEL ARE SUBJECT TO UNITED STATES EXPORT CONTROL LAWS AND REGULATIONS. CUSTOMER AGREES TO COMPLY WITH ALL SUCH LAWS AND REGULATIONS.

CUSTOMERS RESIDING IN CANADA AGREE TO PAY ALL DUTY, TAXES, AND OTHER CHARGES IMPOSED BY U.S AND/OR CANADIAN LAWS AND ANY BROKERAGE FEES CHARGED BY FEDEX, DHL, UPS OR ANY SHIPMENT CARRIER.

RETURNS OR EXCHANGES

TO RETURN PRODUCTS DURING THE WARRANTY PERIOD OR WITHING THE FIRST 3 DAYS AFTER THE RECIPET OF DEFECTIVE OR DEAD ON ARRIVAL (DOA) MERCHANDISE, PLEASE CONTACT VARIEL'S CUSTOMER SERVICE BY CALLING 949.753.8881. ANY RETURN BEING SHIPPED TO VARIEL SHALL REQUIRE AN RMA (RETURN MERCHANDISE AUTHORIZATION) NUMBER AND INSTRUCTIONS TO SHIP THE PRODUCT TO VARIEL. DEFECTIVE OR DOA MERCHANDISE SHALL BE REPLACED WITH THE SAME ITEM ONLY. COMPLETE ORIGINAL PACKAGING WITH ALL SUPPLIED CABLES, MANUALS, SOFTWARE, CABLES, ACCESSORIES AND PROOF OF PURCHASE IS REQUIRED TO RETURN ANY MERCHANDISE. APPROPRIATE CHARGES WILL BE APPLIED IF THESE ITEMS ARE MISSING OR DAMAGED. TO OBTAIN AN RMA NUMBER, CUSTOMER SHALL CONTACT VARIEL'S CUSTOEMR SERVICE WITHIN THREE (3) DAYS OF THE INVOICE DATE OR RECIVE DATE. CUSTOMER SHALL BE ASKED TO FURNISH AN EXPLANATION FOR RETURNING THE MERCHANDISE ALONG WITH THE INVOICE NUMBER, PRODUCT SERIAL NUMBERS AND THE MAKE AND MODEL WHEN OBTAINING AN RMA NUMBER. NO RERUTNED MERCHANDISE WILL EVER BE ACCEPTED WITHOUT A PROPER RMA NUMBER. SUCH NON-COMPLIANT RETURNS WILL BE REFUSED BY VARIEL. NON-WARRANTIED RETURNS FOR THE PURPOSES OF FEE-BASED REPAIR AND SERVICE MUST BE SHIPPED RETURN-FREIGHT PREPAID. ALL RETURNS TO VARIEL MUST BE RECEIVED WITHIN THREE (3) DAYS OF ISSUING THE RMA NUMBER. CUSTOMER IS ALSO RESPONSIBLE FOR TAKING THE PROPER MEASUREMENTS THAT ALL RETURNED MERCHANDISE IS SENT TO THE VARIEL IN THE ORIGINAL PACKAGING IN A RE-SALABLE CONDITION. ANY FURTHER DAMAGE TO THE PRODUCT IN ROUTE TO VARIEL SHALL BE THE RESPONSIBILITY OF THE CUSTOMER AND ALL APPROPRIATE CHARGES SHALL BE APPLIED TO CUSTOMER. ALL RETURNED PRODUCTS MUST BE UNUSED. ALL DEFECTIVE ITEMS SHALL BE REPLACED OR REPAIRED AT VARIEL'S DISCRETION WITHIN THE TERMS AND LIMITS OF THE PROVIDED WARRANTY. ANY MERCHANDISE RETURNED FOR REPLACEMENT THAT IS NOT DEFECTIVE SHALL BE ASSESSED A SERVICE CHARGE AND WILL BE RETURNED FREIGHT COLLECT. TO KEEP THE CUSTOMER'S COSTS AT MINIMUM, OPENED SOFTWARE CAN ONLY BE EXCHANGED FOR A WORKING VERSION OF THE SAME TITLE, OR A 30% RESTOCKING FEE SHALL BE ASSESSED. IN MOST CASES IT IS IMPOSSIBLE TO RETURN OR EXCHNAGE SOFTWARE. ANY OTHER REASONS FOR RETURNING MERCHANDISE TO VARIEL SHALL BE SUBJECT TO A 30% RESTOCKING FEE. THE RMA NUMBER MUST BE WRITTEN ON REMOVABLE STICKERS ON THE OUTSIDE OF THE BOX. CUSTOMER SHALL NOT WRITE THE RMA NUMBER ON VARIEL'S CARTONS ITSELF. ONCE THE PRODUCT HAS BEEN RECEIVED BY VARIEL AND IS DETERMINED TO MEET THE REQUIRED CONDITIONS FOR RETURN, UPON PRIOR WRITTEN AGREEMENT, EITHER A REPLACEMENT IS SHIPPED OR A FULL CREDIT TOWARDS A FUTURE PURCHASE FOR THE SAME AMOUNT WILL BE APPLIED. NO CANCELLATION OR RETURNS ALLOWED BASED

ON REASONS NOT CONSIDERED VALID BY VARIEL WITHIN THE FIRST 3 DAYS OF PURCHASE AND NO CASH REFUNDS SHALL BE ISSUED TO CUSTOMER AFTER THE PURCHASE TO EITHER THE END-USER OR THE RESELLER BY VARIEL.

AFTER THE REQUIRED INITIAL 3 DAYS, ANY PRODUCT RETURN REQUEST WILL BE TREATED FOR SERVICE UNDER THE NORMAL WARRANTY PROCEDURE ONLY.

VARIEL STRONGLY RECOMMENDS CUSTOMERS BACK UP ANY DATA ON THE HARD DRIVES OR OTHER STORAGE PRODUCTS PRIOR TO BEING RETURNED TO VARIEL. VARIEL WILL NOT BE LIABLE FOR ANY LOSS OF DATA.

VARIEL RESERVES THE RIGHT TO REFUSE RETURNS THAT SHOW EXCESSIVE WEAR AND TEAR. VARIEL RESERVES THE RIGHT TO CHARGE CUSTOMERS FOR ANY COSTS INCURRED BY VARIEL TO REFURBISH THE PRODUCT OR RESTORE IT TO RESALABLE CONDITION

MISCELLANEOUS

NO ASSIGNMENT: CUSTOMER MAY NOT ASSIGN ITS RIGHTS OR DUTIES UNDER THESE TERMS OF SALE.

SEVERABILITY: IF ANY PROVISION OF THESE TERMS OF SALE IS DEEMED TO BE UNENFORCEABLE, ILLEGAL, OR OTHERWISE INVALID, THAT PROVISION AND THE REMAINING PROVISIONS WILL BE ENFORCED TO THE GREATEST EXTENT POSSIBLE.

NO ORAL MODIFICATIONS: THESE TERMS OF SALE MAY NOT BE MODIFIED EXCEPT IN A WRITING SIGNED BY CUSTOMER AND VARIEL.

ENTIRE AGREEMENT: THESE TERMS OF SALE, AS SUPPLEMENTED BY SPECIFIC PRODUCT WARRANTIES, WARRANTY DISCLAIMERS, AND SOFTWARE LICENSE AGREEMENTS, ARE THE ONLY AGREEMENT BETWEEN VARIEL AND CUSTOMER RELATING TO CUSTOMER'S PURCHASE OF PRODUCTS USING VARIEL, AND SUPERSEDES ANY PRIOR OR CONTEMPORANEOUS AGREEMENT OR REPRESENTATION.

GOVERNING LAW/EXCLUSIVE FORUM

THE INTERPRETATION, CONSTRUCTION, AND ENFORCEMENT OF THESE TERMS OF SALE WILL BE GOVERNED BY THE DOMESTIC LAWS OF THE STATE OF CALIFORNIA, EXCLUDING ITS CONFLICTS OF LAWS RULES. ANY ACTION REQUIRING THE INTERPRETATION, CONSTRUCTION, OR ENFORCEMENT OF THESE TERMS OF SALE MUST BE BROUGHT IN A STATE OR FEDERAL COURT IN THE FEDERAL JUDICIAL DISTRICT WHERE THE CUSTOMER RESIDES OR IN ORANGE COUNTY, CALIFORNIA.