

## Terms and Conditions of Sale

**PLEASE READ THIS DOCUMENT VERY CAREFULLY. IT CONTAINS IMPORTANT LEGAL INFORMATION RELATING TO YOUR PURCHASE OF MOTION COMPUTING PRODUCTS AND SERVICES, INCLUDING LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU. BY ACCEPTING DELIVERY OF YOUR MOTION PRODUCT OR SERVICE, YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT.**

**1. INTRODUCTION** This agreement ("Agreement") contains terms and conditions applicable to your purchase of Motion Computing, Inc. ("Motion") products and services ("Product"). If you have any questions about this Agreement, please contact Motion at [info@motioncomputing.com](mailto:info@motioncomputing.com).

**2. GOVERNING LAW** THIS AGREEMENT AND ALL SALES THEREUNDER SHALL BE GOVERNED BY THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

**3. PRICES AND TAXES** Prices are exclusive of all federal, state, local, or other government taxes, fees, or charges now in force or enacted in the future. Taxes will be indicated on the invoice; however, if any additional such tax, fee or charge is imposed by any governmental authority on, or measured by, the transaction between Motion and you, you will be responsible for such tax, fee or charge. In the event that Motion is required to pay any such tax, fee, or charge at the time of sale or thereafter, you will reimburse Motion therefor.

**4. SHIPMENT** Any stated ship date is an approximation only. In the absence of specific shipping instructions, Motion will ship by the carrier of its choice. You agree to pay all transportation charges, whether billed by the carrier or Motion. Unless otherwise specified, the Product will be shipped in standard commercial packaging. Products may be shipped to destinations in the United States or Canada only. When special packaging is requested or, in the opinion of Motion, required under the circumstances, the cost of the same, if not set forth on the invoice, will be separately invoiced. Motion continuously upgrades and modifies its products and services to provide customers with new and improved products and services. Motion may modify or discontinue products or services at any time without prior notice to customers and discrepancies between the product you receive and the respective specification sheet may occur. However, in such a case Motion will ship Products that have substantially similar or better functionality and performance. All Products contain new or equivalent-to-new parts except as expressly stated otherwise.

**5. DELIVERY AND PASSAGE OF TITLE** Delivery will be made F.O.B. Motion's facility. The time of delivery is the time the Product to be delivered is picked up by the carrier. Title to the Product (excluding any software, which shall remain the property of the respective licensor) shall pass to you upon shipment from Motion's facility. Loss or damage that occurs during shipping by a carrier selected by Motion is Motion's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility.

**6. PAYMENT TERMS** Buyer agrees to make the payments set forth in the invoice for the Products. Unless otherwise agreed by Motion, payment must be received in full prior to acceptance of your order. For credit card payments, your credit card will be charged when your Product ships. An invoice not paid within terms is considered past due, and such invoices will be subject to a daily charge, compounded monthly, at the rate of either one and one-half percent (1.5%) per month or the highest legal interest rate, whichever is lower.

**7. SECURITY INTEREST** Motion reserves a purchase money security interest in the Products sold and the proceeds thereof, in the amount of the purchase price. In the event of your default in any of your obligations to Motion, Motion will have the right to repossess the Product sold hereunder without liability to you. This security interest will be satisfied by payment in full. A copy of the invoice may be filed with appropriate authorities at any time as a financing statement and/or chattel mortgage. On request of Motion, you agree to execute financing statements and other instruments that Motion may request if needed to perfect Motion's security interest.

**8. RETURNS AND EXCHANGES** Products that are defective may be repaired or replaced in accordance with Motion's standard warranty, the terms and conditions of which will accompany your Product. Except for the foregoing, **all sales are final and the Products may not be returned or exchanged for any reason.**

**9. SOFTWARE AND INTELLECTUAL PROPERTY** All software contained within the Product is provided to you subject to the license agreement that is part of the package or shown during installation of the software. You agree to be bound by any such license by opening the package or installing and/or using the software. Any warranty related to such software shall be provided solely within such license agreement. Motion hereby retains for itself all other rights, title, and interest in and to all intellectual property in the Products sold and any products or software or other deliverable created during performance of the services, including without limitation, worldwide copyright, trade secret, patent, trademark, and any other proprietary rights.

**10. WARRANTIES** ANY WARRANTY ASSOCIATED WITH THE PRODUCT IS INCLUDED IN THE DOCUMENTATION PROVIDED WITH THE PRODUCT. A COPY OF SUCH LIMITED WARRANTY MAY ALSO BE FOUND AT [HYPERLINK]. WARRANTIES RELATING TO SOFTWARE, IF ANY, MAY BE FOUND IN THE RESPECTIVE LICENSE AGREEMENT. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THE FOREGOING DOCUMENTS, THE PRODUCTS ARE PROVIDED "AS IS" AND MOTION MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND NON-INTERFERENCE. MOTION DOES NOT WARRANT THAT YOUR USE OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD.

**11. LIMITATION OF LIABILITY** UNDER NO CIRCUMSTANCE SHALL MOTION BE LIABLE FOR (A) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR LOST PROFITS, EVEN IF MOTION KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, (B) ANY CLAIM MADE BY A THIRD PARTY OR MADE BY YOU FOR A THIRD PARTY, OR (C) ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY YOU FOR THE PRODUCTS PURCHASED HEREUNDER. THIS LIMITATION OF LIABILITY APPLIES WHETHER DAMAGES ARE SOUGHT AS A TORT CLAIM (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), A CONTRACT CLAIM, OR ANY OTHER CLAIM AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THIS LIMITATION OF LIABILITY, HOWEVER, WILL NOT APPLY TO CLAIMS FOR PERSONAL INJURY. SOME STATES OR COUNTRIES DO NOT ALLOW A LIMITATION ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR CONSUMER PRODUCTS. IN SUCH STATES OR COUNTRIES, SOME EXCLUSIONS OR LIMITATIONS CONTAINED HEREIN MAY NOT APPLY TO YOU.

**12. RESALE AND EXPORT** You agree that you are buying the Product for your own use, and not for resale. Motion has separate terms and conditions governing resale transactions. The Product is intended for use only within the United States or Canada. The Product may be subject to export laws and other regulations in the United States or other countries, and you agree to comply with all such laws, regulations, or requirements as may apply to your receipt, export, or use of the Product. You agree to indemnify Motion for any liability resulting from your failure to comply with applicable export laws, regulations, or requirements.

### **13. GENERAL**

(a) The state or federal courts sitting in Travis County, Texas shall have exclusive jurisdiction and venue over any dispute arising out of this agreement and sale, and you hereby consent to the jurisdiction of such courts.

(b) The terms and conditions set forth herein and any applicable software license(s) comprise the entire agreement between Motion and you regarding this subject matter, and may be modified only in a writing signed by authorized officers of both parties.

(c) This Agreement may not be modified, supplemented, qualified, or interpreted by any trade usage or prior course of dealing not made a part of the Agreement by its express terms.

(d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity of this Agreement as a whole and any such provision should be enforced by authorities, and reconstructed if need be, to apply to the maximum extent allowable under applicable law.

(e) You hereby acknowledge that you have not entered into this Agreement in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically described herein.

(f) The failure by either party to enforce at any time any of the provisions of this Agreement, to exercise any election or option provided herein, or to require at any time the performance of the other of any of the provisions herein will not in any way be construed as a waiver of such provisions.

(g) Reasonable attorneys' fees and costs will be awarded to the prevailing party in the event of litigation involving the enforcement or interpretation of this Agreement.

(h) The section headings used herein are for convenience only and shall not be given any legal import.