

## **VARDATA, LLC**

### **VARDATA SALES ORDER TERMS AND CONDITIONS**

**DEFINITIONS:** 'The Seller' means VarData LLC, whose principal offices are located at 50 Methodist Hill Drive, Suite 1000, Rochester, NY 14623.

'The Buyer' means the person, company or other party who agrees to buy the goods from the Seller.

'The Goods' means the goods that the Seller is to supply in accordance with these Terms and Conditions of Sale. Any reference to 'the Goods' shall, where appropriate, include a reference to part of them.

'The Price' means the price quoted at the date the order is accepted.

**APPLICABLE TERMS AND CONDITIONS:** The terms and conditions of sale contained herein apply to all quotations made and purchase orders entered into by the Seller. The said terms and conditions may in some instances conflict with some of the terms and conditions affixed to the form and/or order blank specified by the Buyer. Therefore, acceptance of the Buyer's order is made only on the expressed understanding and condition that insofar as the terms and conditions of this acceptance conflict with the terms and conditions of the Buyer's order, the terms and conditions of the Seller shall govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implications or acceptance and payment of goods ordered hereunder. Seller's failure to object to provisions contained in any communications from Buyer shall not be deemed a waiver of the provisions of the Seller's terms and conditions. Any changes in the terms and conditions of sale contained herein must specifically be agreed to in writing by the authorized representative of the Seller before becoming binding on the Seller

**VALIDITY:** These Terms and Conditions of Sale form the whole agreement between the Seller and the Buyer and shall not be removed or varied in any way. No other express terms or conditions, written or oral, shall be incorporated into the contract.

**PRICE:** The Price is exclusive of all fees, shipping charges and taxes and shall be paid in accordance with the Seller's settlement terms. The Seller reserves the right to vary the Price as occasion demands.

**DELIVERY:** Delivery terms are FOB Seller's shipping dock unless otherwise specified by Seller. Delivery shall deem to have been made when the Buyer's shipment has been delivered to a carrier, specified by the Buyer on the purchase order or equivalent. In the event that Buyer does not specify the carrier, the carrier may be at Seller's option.

Any delivery date notified by the Seller to the Buyer shall be an estimate only and the Seller shall not be liable for any delay in delivery of the Goods, howsoever caused. Time of delivery is not of the essence of the contract.

Where the Goods are delivered by installments, no failure by the Seller to deliver in respect of one or more installments shall impair the contract in respect of goods previously delivered or undelivered.

Cancellation of an order, in whole or in part, cannot be accepted without the Seller's consent in writing which shall only be given on a full indemnity by the Buyer to the Seller.

The Seller's settlement terms are strictly 30 days from the date of the invoice or as otherwise stated on the invoice. All Payments must be made in U.S. dollars.

Interest on late payments will be charged at 2%.

**RISK:** Risk in the Goods passes to the Buyer when the Seller delivers the Buyer's order.

The Buyer must insure the Goods against all insurable risks for the price due to the Seller for the Goods.

**TITLE:** Title of the products sold hereunder shall pass to Buyer upon delivery by Seller. However, buyer hereby agrees that Seller shall retain a purchase money security interest in all products sold to Buyer pursuant to this Agreement. To all products now or hereafter acquired by Buyer (the "collateral"), and to any proceeds from the disposition of such product until the purchase price and other charges due Seller shall have been paid in full. Buyer agrees to execute any financing statements or other documents as Seller may request in order to protect Seller's security interest. Upon any default by Buyer hereunder, Seller shall have all rights and remedies of secured party under the Uniformed Commercial Code which right shall be cumulative.

**LIABILITY:** The Buyer must carefully examine the Goods immediately on receipt of them and must notify the Seller in writing of any defect (including any discrepancy in the condition of the Goods) or short delivery reasonably discoverable on careful examination.

If the Buyer does not notify the Seller within three days from the date of delivery, the Seller excludes all liability for any short delivery or defect (including any discrepancy in the condition of the goods) that should reasonably have been discovered on careful examination.

Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Seller's negligence). Examples of indirect loss are, but are not limited to: loss of profit; loss of contracts; damage to the Buyer's property or property of any other person and personal injury to the Buyer any other person, other than that caused by the Seller's negligence.

Except in respect of death or personal injury caused by the Seller's negligence, the Seller's total liability for any one claim or for the total of all claims arising from any one act or default of the Seller (whether arising from the Seller's negligence or otherwise) shall not exceed the Price.

The Seller is not liable for any failure to deliver the Goods arising from circumstances outside the Seller's control. Non exhaustive illustrations of circumstances outside the Seller's control include an act of God, war, riots, explosion, acts of terrorism, abnormal weather conditions, fire, flood, Government action, strikes, lockouts, embargoes, accidents and shortages of materials, labor or manufacturing facilities.

Due to the continuing process of technical change and development the Goods supplied by the Seller may not comply in all respects with the technical specifications described in the Seller's literature.

Any Goods supplied to the Buyer by the Seller which is subject to restrictions or provisions imposed by manufacturer's license conditions are supplied to the Buyer by the Seller subject to any such license conditions.

Used equipment is supplied without a software license. New licenses can be purchased from the Seller or the applicable manufacturer

**RETURN:** Prior authorization, in the form of a RMA number, must be obtained from the Seller before any Goods are returned. Any Goods returned without a RMA number will be refused and returned to the Buyer.

The Goods must be returned within 14 working days or the RMA will expire. The Buyer will then be liable for the payment these Goods at their original Selling Price.

All returned Goods must be in their original box and packaging as supplied and include any cables, literature and peripherals. Boxes must be unmarked. The original box must be packed inside an outer box to avoid damage. The outer box must be clearly marked with the Seller's address and RMA number provided. Any Goods returned incomplete in any way will be refused and returned to the Buyer.

Any goods returned which are not faulty, or are in an unsalable condition will be subject to a restocking fee of 25% unless otherwise agreed in writing.

**WARRANTY:** The Seller warrants all goods sold for one year from date of sale unless otherwise stated on the seller's invoice.

All warranties hereunder are made subject to the proper use by Buyer in the application for which such products were intended. The warranties do not cover any products which have been misused, modified, have been subjected to unusual stress, have not been properly maintained or on which any original serial numbers or other identification marks have been removed or destroyed. In any event, Seller's liability shall be to the replacement value of any damaged or defective part.

The express warranty set forth above is the only warranty applicable to the products sold subject to these terms and conditions and is expressly in lieu of any other warranty by Seller, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose. The express warranty set forth above is also in lieu of any and all liabilities of Seller for damages arising out of or as a consequence of or in connection with the use or performance of Seller's products.

**EXPORT SHIPMENTS:** In the event Buyer wishes to arrange for export shipment, Buyer shall inform Seller by so indicating on the order and providing any special instructions. Buyer is responsible for all expenses related to the shipping and exporting of their product including sales, use and excise taxes, custom duty or impost, value added tax or similar taxes. The Buyer shall provide the Seller with their account number for the vendor/vendors of choice for shipping their order.

## **VARDATA PURCHASE ORDER TERMS AND CONDITIONS**

**1. ACCEPTANCE:** Seller's acceptance of this offer to contract is expressly limited to the terms and conditions set forth in this offer. Any additional or different terms in Seller's acceptance of this offer shall not become part of this Contract.

**2. PACKAGING:** Seller shall package the Goods in accordance with any instructions of Owner, or, if there are no such instructions, in accordance with commercially reasonable practice in order to protect the Goods in transit. The cost of packaging the Goods shall be borne by Seller.

**3. FREIGHT:** Unless otherwise specified herein, Seller shall load the Goods onto the carrier and shall bear the cost of such loading and freight.

**4. TIME AND DELIVERY:** Deliveries shall be made during normal business hours, unless otherwise specified by Owner.

**5. INSPECTION:** Owner shall have the right to inspect the Goods at the time and place of delivery. Any rejected Goods may be returned to Seller at Seller's expense. Seller shall pay Owner for all loss, damages, costs or expenses arising out of the rejection or return of Goods, in addition to any other remedies Owner may have under law. No returned or rejected Goods shall be replaced by Seller except upon receipt of written instructions from Owner.

**6. RISK OF LOSS:** Risk of loss of the Goods shall not pass from Seller to Owner unless and until Owner has inspected and accepted the Goods.

**7. OVERSHIPMENTS:** Owner may reject or return quantities of Goods in excess of the quantity ordered at Seller's expense.

**8. WARRANTIES:** Seller represents and warrants to Owner that: (a) the Goods conform in specifications and functions to any written descriptions, models or samples of the Goods which have been supplied by Seller to Owner; (b) the Goods are merchantable and fit for the particular purpose for which Owner is purchasing the Goods; (c) the sale and shipment of the Goods shall comply with all federal, state and local laws, regulations and orders applicable thereto. The foregoing representations and warranties shall survive delivery and acceptance of the Goods and payment therefore.

**9. CANCELLATION:** This Contract may be cancelled by Owner without cause at any time, in which event Owner will pay any reasonable costs incurred by Seller for the performance of the Contract up to the cancellation date.

**10. INSURANCE:** Seller shall maintain commercial general liability insurance on an occurrence basis, including products liability, completed operations and automobile liability-physical damage insurance, or the equivalent, and work's compensation insurance required by law. The liability insurance shall have a combined single limit of at least \$2,000,000.00 or the equivalent.

**11. LIABILITIES OF PARTIES:** Except for liabilities caused solely by the intentional or negligent acts or omissions of Owner or Agent, Seller agrees to defend and indemnify Owner and Agent against any claims, damages, losses, expenses and attorneys' fees arising out of this Contract or the sale of the Goods by Seller. Owner may, at its election, withhold any monies payable hereunder and apply the same to the payment of any charges or expenses arising under this paragraph.

**12. ACT OF GOD:** Neither party shall be liable for failure to perform this Contract, if such failure is caused by labor disputes, natural disaster or any Act of God or other cause beyond such party's control.

**13. PAYMENT:** Unless otherwise specified herein, any invoices for the Goods shall be due and payable thirty (30) days after receipt of the Goods.

**14. TAXES:** Seller shall be responsible for the collection and payment of all sales, use and other taxes applicable to the sale of the Goods, and shall reimburse Owner if Owner shall pay any such taxes.

**15. LAW:** This Contract shall be governed by the law of the state in which the Property is located.

**16. ARBITRATION:** At Owner's sole discretion, Owner may elect to have any claims or disputes arising out of this Contract decided by arbitration in accordance with the rules of the American Arbitration Association in effect at the time of the demand for arbitration. If Owner so elects, a demand for arbitration shall be filed with the American Arbitration Association and delivered to the other party in such dispute. The decision in writing of the arbitrator appointed by such association shall be final and conclusive as to all parties to such dispute. Should any party fail to appear or participate in such arbitration proceedings, the arbitrator may decide the dispute on the evidence presented in such proceedings by the other party to such dispute.

**17. MISCELLANEOUS:** This Contract and the written descriptions, models and samples referred to in Paragraph 8 contain all of the terms and conditions agreed upon by the parties regarding the subject matter hereof. No modification hereof shall be valid unless executed in writing by the parties. If there is any dispute, including without limitation costs of arbitration and attorneys' fees. If any provision of the Contract is held unenforceable, the other provisions shall remain enforceable. Neither party may assign this Contract without the prior written consent of the other party. Time is of the essence in this Contract.