

TERMS AND CONDITIONS OF SALE

WHEREAS, Cascade is a supplier of used and refurbished computer equipment; and

WHEREAS, Purchaser desires to purchase from Cascade, and Cascade desires to sell to Purchaser, certain used and refurbished computer equipment pursuant on the terms and conditions set forth in these Terms.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Terms Prevail Over Other Agreements. These Terms are the only terms that govern the sale of used and refurbished computer equipment (the “Goods”) by Cascade to Purchaser. These Terms supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, between the parties. These Terms shall prevail over any of Purchaser’s general terms and conditions of purchase regardless of whether or when Purchaser has submitted its purchase order or such terms.
2. Ordering Procedure. Purchaser shall issue to Cascade purchase orders (containing applicable terms that are consistent with these Terms) in written form. By issuing a purchaser order to Cascade, Purchaser makes an offer to purchase Goods pursuant to these Terms and on no other terms. Purchaser shall be obligated to purchase from Cascade quantities of Goods specified in a purchase order.
3. Shipment. Unless otherwise expressly agreed to by the parties in writing, Cascade shall select the method of shipment of and the carrier for the Goods. Any time quoted for delivery is an estimate only; provided, however, that Cascade shall use commercially reasonable efforts to deliver all Goods on or before the requested delivery date. Cascade shall not be liable for any delays, loss or damage of the Goods in transit. Cascade may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Purchaser. Each shipment will constitute a separate sale and Purchaser shall pay for the Goods shipped. Purchaser shall pay for, and shall hold Cascade harmless from, all shipping charges and insurance costs. In addition, all prices for the Goods are exclusive of, and Purchaser is solely responsible for, and shall pay, and shall hold Cascade harmless from, all taxes, duties and fees with respect to, or measured by, the manufacture, sale, shipment, use or price of the Goods (including interest and penalties thereon).
4. International Product Shipment.
 - a. If no international declaration or bill of lading is required for the Goods, Cascade will complete a standard resale invoice and clearly identify the “bill to” and “ship to” address for the Goods, in which case Purchaser shall ship the Goods for reuse domestically only. If Purchaser intends to resell the equipment without retesting it, then Purchaser shall provide Cascade, upon request, with evidence (such as letters of acknowledged receipt from the final end users or pictures of the retail

stores reselling the equipment) to demonstrate the equipment is being reused appropriately by the final customer. If Purchaser intends to resell the Goods internationally, Purchaser shall be listed as the “Exporter of Record.” Cascade shall be listed as the Purchaser’s international “ship to” address on Cascade’s resale invoice and may direct-load overseas shipping containers or other vehicles with the resold Goods. Cascade shall be referred to as the “U.S. Principal Party in Interest” in these transactions. Prior to export of the Goods from the United States, Cascade must receive assurances that all paperwork is completed properly and that goods are exported in compliance with United States and applicable international law.

- b. For any Goods that are to be exported by Purchaser from the United States, any commercial invoices, bills of lading or air waybills shall contain the following language: “These commodities, technology, or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”
 - c. Purchaser represents, warrants and covenants that every subsequent sale or transfer of the Goods is destined for direct reuse, and not for recycling (including repair) or disposal. Purchaser shall document and maintain (and provide copies to Cascade upon Cascade’s request):
 - i. a copy of the contract, invoice or receipt relating to the sale and/or transfer of ownership or equipment, which states the name and address of the buyer/receiver, including country, that the equipment or components are fully functional, and that the equipment or components are being sold, donated and/or received for direct reuse; and
 - ii. Bills of lading/waybills and/or other relevant shipping records, if shipping is involved, with both the buyer/receiver and seller/donor listed.
5. Audit Rights. Purchaser hereby grants Cascade access, upon reasonable notice, to Purchaser’s operations, facilities, books and records related to the Goods for the purpose of ensuring Purchaser’s compliance with the terms of this Agreement. Purchaser agrees to maintain all pertinent books and records for a period of two (2) years after expiration of these Terms. Purchaser further agrees to cooperate fully with Cascade with respect to all reasonable requests of Cascade relating to the foregoing access rights.
6. Compliance With Laws. Purchaser shall comply with all applicable laws, regulations and ordinances. Purchaser shall maintain in effect all of the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under these Terms. Purchaser shall comply with all export and import laws of all countries involved in the sale of the Goods under these Terms or any resale of the Goods by Purchaser. Purchaser assumes all responsibility for shipments of Goods requiring any government import clearance.

7. Payment Terms. Purchaser shall pay all invoiced amounts due to Cascade within 5 days from the date of Cascade's invoice, and prior to when the equipment is shipped from Cascade. Purchaser shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Purchaser shall reimburse Cascade for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. Purchaser shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Cascade, whether relating to Cascade's breach, bankruptcy or otherwise.

8. Limited Warranty.
 - a. Cascade warrants to Purchaser that, for a period of 45 days from the date of shipment of the Goods (the "Warranty Period"), such Goods will perform to the original manufacturer's specifications as demonstrated by the manufacturer's diagnostics.

 - b. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 8(a), CASCADE MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

 - c. Cascade shall not be liable for a breach of the warranty set forth in Section 8(a) if any modifications have been made to the Goods' operating system or hardware configuration. If Goods are submitted for warranty work and such modifications have been made, any work done by Cascade to correct problems caused by such modifications will be performed at labor rates of **[\$70.00]** per hour, with a minimum charge of **[\$50.00]**.

 - d. Subject to Section 8(c), above, with respect to any breach of the warranty set forth in Section 8(a), Cascade shall, in its sole discretion, replace or repair any defective component of the Goods. The defective Goods must be returned to Cascade accompanied with a return authorization number issued by Cascade by telephone or by the automated Return Material Authorization request form from Cascade's website. Reimbursement for return shipping costs will be made in the sole discretion of Cascade. The replacement or repair shall be performed within a reasonable period of time, not to exceed one week (not including transportation time). Return shipping to Purchaser shall be at Cascade's expense in the event warranty work is needed. In the event a replacement or repair is impossible, Cascade shall provide a refund for the defective Goods in the amount of the original purchase price.

9. Return Policy. Any purchase of Goods may be returned, shipping prepaid, for any reason within the first 45 days after purchase. Cascade will refund the original purchase price, and at its sole discretion may implement a 15% restocking fee. The returned Goods must be in their original purchase condition. Any work necessary to return such Goods to their original condition, including the removal of application software, will be performed at labor rates of **[\$70.00]** per hour and deducted from the refund.

10. Limitation of Liability. IN NO EVENT SHALL CASCADE BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY PURCHASER OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL CASCADE'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO CASCADE FOR THE GOODS SOLD HEREUNDER.

11. Confidentiality. From time to time, either party hereto (as the "Disclosing Party") may disclose or make available to the other party (as the "Receiving Party") information about its business affairs, goods and services or other sensitive or proprietary information. Such information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is collectively referred to as "Confidential Information" hereunder. Notwithstanding the foregoing, Confidential Information does not include information that, at the time of disclosure: (a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 11 by the Receiving Party or any of its representatives; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party; (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or (e) is required to be disclosed pursuant to applicable Law. The Receiving Party shall, for two years from receipt of such Confidential Information: (x) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (y) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under these Terms; and (z) not disclose any such Confidential Information to any Person, except to the Receiving Party's representatives who need to know the

Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under these Terms. At any time during the parties' relationship, at the Disclosing Party's written request, the Receiving Party and its representatives shall promptly return or destroy all Confidential Information and copies thereof that it has received under these Terms.

12. Privacy. CASCADE SELLS USED AND REFURBISHED EQUIPMENT THAT IN MANY CASES WAS FORMERLY USED BY BUSINESSES AND OTHER INSTITUTIONS THROUGHOUT THE UNITED STATES. PURSUANT TO CONTRACTS WITH THESE BUSINESSES AND OTHER INSTITUTIONS, CASCADE REMOVES ELECTRONIC DATA FROM THE EQUIPMENT PRIOR TO RESALE. MANY OF THESE BUSINESSES AND INSTITUTIONS REQUIRE CASCADE TO RETAIN A SPECIFIC RECORD OF THE REMOVAL PROCEDURES FOR EACH PIECE OF SUCH EQUIPMENT, ALONG WITH THE NAME AND LOCATION OF ANY PURCHASER OR OTHER USER OF EACH PIECE OF SUCH EQUIPMENT. BY PURCHASING USED AND REFURBISHED EQUIPMENT FROM CASCADE, PURCHASER ACKNOWLEDGES AND AGREES THAT CASCADE, IF SO REQUESTED, MAY DISCLOSE THIS INFORMATION TO THE BUSINESS OR INSTITUTION FROM WHICH THE EQUIPMENT ORIGINATED NOTWITHSTANDING THE PROVISIONS OF SECTION 11 HEREOF. CASCADE WILL USE COMMERCIAL REASONABLE EFFORTS TO ALERT PURCHASER OF ANY SUCH DISCLOSURE.

13. Indemnification. Purchaser shall indemnify, defend and hold harmless Cascade and its representatives/officers, directors, employees, agents, affiliates, successors and assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind incurred by Indemnified Party (collectively, "Losses"), relating to or resulting from any third-party claim alleging:
 - a. a breach or non-fulfillment of any representation, warranty or covenant under these Terms by Indemnifying Party;
 - b. any negligent or more culpable act or omission of Indemnifying Party (including any recklessness or willful misconduct) in connection with the performance of these Terms;
 - c. any bodily injury, death of any person or damage to real or tangible personal property caused by the acts or omissions of Indemnifying Party; or
 - d. any failure by Indemnifying Party to comply with any applicable laws.

14. Force Majeure. Cascade shall not be liable or responsible to Purchaser, nor be deemed to have defaulted or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Cascade including, without limitation, acts of God, flood, fire, earthquake, explosion,

governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

15. Assignment. Purchaser shall not assign any of its rights or delegate any of its obligations under these Terms without the prior written consent of Cascade. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Purchaser of any of its obligations under these Terms.
16. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
17. No Third-Party Beneficiaries. These Terms are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
18. Governing Law and Venue. All matters arising out of or relating to these Terms shall be governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule (whether of the State of Wisconsin or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Wisconsin. Any legal suit, action or proceeding arising out of or relating to these Terms shall be instituted in the federal courts of the United States of America or the courts of the State of Wisconsin in each case located in Milwaukee County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.
19. Notices. All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in these Terms, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.
20. Amendment and Modification. No amendment to or rescission, termination or discharge of these Terms is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of these Terms and signed by an authorized representative of each party.

21. Counterparts. These Terms may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.