

# Ecessa Standard Terms & Conditions of Sale

This document contains the terms and conditions that apply to Customer's purchases of Products from Ecessa ("Seller"). Acceptance of Customer's order is based on these terms and conditions of sale applying. By accepting delivery of products from Seller, Customer agrees to be bound and to accept these terms and conditions. These terms and conditions shall apply unless Customer and Seller have signed a separate purchase agreement with different terms and conditions.

## 1. Terms of Sale

Payment terms are net 30 days from invoice date with approved credit. If credit has not been established with Seller, terms may be designated as payment in advance. Seller reserves the right at any time and for any reason to require payment in advance, or otherwise to modify, suspend, or terminate any credit terms previously extended to Customer. Seller shall be entitled to refuse or delay shipments for failure by Customer to pay within terms any payments due Seller, whether on this or any other contract between Seller and Customer. All shipments are F.O.B. shipping point. The full purchase price shall be invoiced upon delivery to a common carrier. A 1.5% per month service charge, or the maximum permitted by law, whichever is less, may be added to delinquent accounts. In the event that it becomes necessary for Seller to incur collection costs or institute a suit to collect any amount due and payable, Customer agrees to pay such additional collection costs, charges, and expenses, including attorney's fees if the account is placed in the hands of an attorney or an agency for collection. Prices are subject to change without notice. Payments should be made according to the instructions on the face of the invoice, based on the form of payment described below.

## 2. Forms of Payment

Acceptable forms of payment include check, money order, wire transfer, SWIFT Transfer, VISA, MasterCard, or American Express, all in United States of America currency only (USD).

## 3. Shipping Charges; Taxes

Separate charges for shipping and handling will be shown on the invoice(s). Unless Customer provides Seller with a valid and correct tax exemption certificate applicable to the product ship-to location prior to Seller's acceptance of the order, Customer is responsible for sales and all other taxes associated with the order. If applicable, a separate charge for taxes will be shown on the invoice.

## 4. Title; Risk of Loss

Title to products and risk of loss passes from Seller to Customer upon shipment from Seller's facilities and delivery of product to a common carrier. Title to software will remain with the applicable licensor(s).

## 5. Claims for Omitted or Damaged Goods

Any claims by Customer for omission of products in the shipped goods, shortages of product, or damaged goods in a shipment are waived by Customer unless Customer provides notice to Seller within 10 days after Customer's receipt of shipment.

## 6. Limited Warranty

a. Seller warrants that Ecessa products will be free from defects in materials and workmanship for a period of three (3) years from the date of delivery with respect to hardware and will materially conform to their published specifications for a period of three (3) years with respect to software. Seller does not warrant that the software or any portion thereof is error free. Seller will have no warranty obligation with respect to Products subjected to abuse, misuse, negligence or accident. If any software or firmware incorporated in any Product fails to conform to the warranty set forth in this Section, Seller shall provide a bug fix or software patch correcting such non-conformance within a reasonable period after Seller receives from Customer (i) notice of such non-conformance, and (ii) sufficient information regarding such non-conformance so as to permit Seller to create such bug fix or software patch. If any hardware component of any Product fails to conform to the warranty in this Section, Seller

shall, at its option, refund the purchase price less any discounts, or repair or replace non-conforming Products with conforming Products or Products having substantially identical form, fit, and function and deliver the repaired or replacement Product to a carrier for land shipment to customer within a reasonable period after Seller receives from Customer (i) notice of such non-conformance, and (ii) the non-conforming Product provided; however, if, in its opinion, Seller cannot repair or replace on commercially reasonable terms it may choose to refund the purchase price. Repair parts and replacement products may be reconditioned or new. All replacement products and parts become the property of Seller. Repaired or replacement products shall be subject to the warranty, if any remains, originally applicable to the product repaired or replaced. Customer must obtain from Seller a Return Material Authorization Number (RMA) prior to returning any Products to Seller. Products returned under this Warranty must be unmodified and in original packaging. Seller reserves the right to repair or replace products at its own and complete discretion. Customer must obtain from Seller a Return Material Authorization Number (RMA) prior to returning any products to Seller. Products returned under this Warranty must be unmodified and in original packaging. Seller reserves the right to refuse warranty repairs or replacements for any products that are damaged or not in original form.

b. As a condition to Seller's obligations under the immediately preceding paragraphs, Customer shall return Products to be examined and replaced to Seller's facilities, in shipping cartons which clearly display a valid return materials authorization number provided by Seller. Customer acknowledges that replacement products may be repaired, refurbished or tested and found to be complying. Customer shall bear the risk of loss for such return shipment and shall bear all shipping costs. Seller shall deliver replacements for Products determined by Seller to be properly returned, shall bear the risk of loss and such costs of shipment of repaired products or replacements, and shall credit Customer's reasonable costs of shipping such returned Products against future purchases. Products determined by Seller to be not properly returned shall be redelivered to Customer FOB Seller's facilities, and Seller will issue an invoice for, and customer shall pay, any return shipment costs charged to Seller.

c. Seller's sole obligation under the warranty described or set forth here shall be to repair or replace non-conforming products as set forth in the immediately preceding paragraph, or to refund the documented purchase price for non-conforming Products to Customer. Seller's warranty obligations shall run solely to Customer, and Seller shall have no obligation to customers of Customer or other users of the Products.

Limitation of Warranty and Remedies.

THE WARRANTY SET FORTH HEREIN IS THE ONLY WARRANTY APPLICABLE TO PRODUCTS PURCHASED BY CUSTOMER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. ECESSA'S LIABILITY WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE PRODUCT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

IN ADDITION TO THE WARRANTIES DISCLAIMED ABOVE, SELLER SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESSED, FOR USES REQUIRING FAIL-SAFE PERFORMANCE IN WHICH FAILURE OF A PRODUCT COULD LEAD TO DEATH, SERIOUS PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE SUCH AS, BUT NOT LIMITED TO, LIFE SUPPORT OR MEDICAL DEVICES OR NUCLEAR APPLICATIONS. PRODUCTS ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE APPLICATIONS.

## **7. Indemnification**

Seller shall defend or settle any claim, suit, or action against Customer based on an allegation that any Product purchased by Customer from Seller infringes any third party's U.S. patent or copyright; provided, that Customer has made no modification or alterations to the product and that Customer gives Seller prompt written notice of any claim or suit, sole authority to defend or settle as it sees fit, and full cooperation. Seller may, at its sole option and expense (i) procure for Customer the right to continue using the product (ii) modify the product so that it is non-infringing (iii) procure a replacement product that has substantially the same functionality, or if none of the above options is reasonably available (iv) refund to customer the purchase price originally paid less a use credit for the period of use. Seller has no liability for any claim, suit or action based in whole or in part upon or arising out of compliance with Customer's designs, specifications or instructions, modification of the Hardware or Software, or

the combination of the Hardware or Software with products or items not furnished by Seller. THIS SECTION STATES SELLER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM, SUIT, OR ACTION ALLEGING INFRINGEMENT OF ANY THIRD PARTY PATENT OR COPYRIGHT.

#### **8. Order changes and cancellation policy**

Accepted purchase orders are non-cancellable and the items are non-returnable (NC/NR).

#### **9. Thirty-Day Return Policy**

Customers may return Ecessa Products for a full refund if product fails to perform as designed. Seller must be contacted within thirty days of the Customer's receipt of the product. Customer may return Products for credit, exchange, or a refund. Customer must obtain from Seller a Return Material Authorization Number (RMA) prior to returning any products to Seller. Products must be returned unmodified and in original packaging. Seller reserves the right to refuse return rights for any products that are damaged or not in original form. Volume orders are subject to a restocking fee.

#### **10. Software**

All software is owned by Seller or a third party licensor who shall retain exclusive right, title and ownership of the software. Customer is granted a limited, personal, non-exclusive license, without the right to sublicense, to use the software only with the specific Seller manufactured hardware that such software is intended to operate with or, if not for use with specific Seller manufactured hardware, then for the use intended by the Product specification.

#### **11. Governing Law**

THIS AGREEMENT AND ANY SALES THEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA. The United Nations Convention on Contracts for the International Sale of goods shall not apply. Customer agrees to comply with all applicable laws and regulations of the various states and of the United States. Seller has separate terms and conditions governing resales and transactions outside the United States. Customer agrees to comply with all United States laws concerning export or re-export of products and related technology and documentation.

#### **12. Disputes**

The parties agree that the courts of the State of Minnesota shall have exclusive jurisdiction over any claim, or dispute or controversy (whether in contract, tort or otherwise) against Seller, its agents, employees, successors, assigns or affiliates arising out of or relating to this document, Seller's Products advertising, or any related purchase. Customer agrees to appear in any such action and hereby consents to the jurisdiction of such court.

#### **13. Force Majeure**

Seller shall not be liable for any damages or penalty for delay in delivery or for any other failure to perform in accordance with the terms and conditions hereof if such delay or failure to perform is due in whole or in part to factors beyond Seller's reasonable control, including, but not limited to, delay in transportation or delay in delivery by Seller's vendors.

#### **14. Export Restrictions**

Customer agrees to comply with all applicable United States export control laws and regulations concerning export and re-export of Products, technology and documentation, including without limitation, the laws and regulations administered by the United States Department of Commerce and the United States Department of State.

#### **15. Severability**

Any waiver of or modification to the terms of this Agreement will not be effective unless executed in writing and signed by Seller. If any provision of these terms and conditions are held to be unenforceable, in whole or in part, such holding shall not affect the validity of the other provisions of this document (In the event of any inconsistency between these terms and conditions and any other related agreements between Customer and Seller, the terms of this document shall prevail unless any other agreement(s) are signed by both parties and state its/their terms and conditions control).

**16. Entire Agreement**

The terms and conditions set forth herein constitute the entire agreement between the parties and supersede any communications or previous agreements with respect to the subject matter of this Agreement. There are no written or oral understandings directly or indirectly related to this Agreement that are not set forth herein. No amendment can be made to this Agreement other than in writing and signed by both parties.