

NIMBELINK CORP.
TERMS AND CONDITIONS OF SALE

1. Applicability. These Terms and Conditions of Sale (the “Terms”) apply to and govern all sales of products (“Products”) offered for sale by NimbeLink Corp. (“NimbeLink”) to customers identified in quotations from NimbeLink (“Customer”) except to the extent these Terms have been modified or superseded explicitly under any other agreement signed in writing by an officer of NimbeLink. NimbeLink and Customer are each a “Party” and are referred to collectively as the “Parties” in these Terms.
2. Orders. Customers may order Products by issuing purchase orders in conformity with quotations issued by NimbeLink (“Orders”). Orders will be binding upon NimbeLink only if accepted expressly and in writing by NimbeLink. The agreement between the Parties for any Order (the “Agreement”) consists of: (i) these Terms; (ii) the Products, prices, quantities, payment and delivery terms consistent with a NimbeLink quote set forth in or incorporated in the Order; and (iii) and any modifications or additions to these Terms accepted in writing by an officer of NimbeLink; no provision of any Customer purchase order will be binding upon NimbeLink unless expressly accepted by NimbeLink in that manner.
3. Modification of Orders. Unless otherwise specified in the Agreement, Customer may modify quantities or schedules for delivery of Product under an accepted Order by delivering written notice to NimbeLink in the method set forth below given more than forty-five (45) days in advance of the first scheduled delivery date set forth in that Order; after that point in time Orders are fixed commitments of Customer and may be modified only if agreed in writing by an officer of NimbeLink.
4. Prices; Taxes and Associated Charges. All prices quoted by NimbeLink are valid only for Orders placed within the period of validity set forth in the NimbeLink quotation and are otherwise subject to change at any time. Prices are subject to correction for clerical and typographical errors. All prices quoted by NimbeLink are quoted Ex Works the NimbeLink or its contractors’ facility (IncoTerms©2010) and are exclusive of: (i) sales, use, value-added, excise or other taxes, (ii) shipping and insurance charges, and (iii) duties, fees, tariffs or other governmental charges, all as they may apply to any Order; all such amounts are payable by Customer and will be reimbursed to NimbeLink at its cost if paid by NimbeLink. Unless Customer provides NimbeLink with a valid exemption certificate for the destination specified in the Agreement, NimbeLink shall include sales tax as a separate line item on the invoice for the Order and Customer shall pay such amounts when due.
5. Shipping and Insurance. All Products will be shipped from NimbeLink or its contractor’s facility to a Customer designated location in the United States of America using a tracked shipment means and carrier selected by NimbeLink. Customer receives title to the Products and will bear the risk of loss to Products upon delivery of the Products by NimbeLink or its contractor to the selected shipper (“Delivery”). The costs of shipping and insurance following Delivery are additional to quoted prices and are separately payable by Customer or will be reimbursed to NimbeLink if paid by it.
6. Inspection and Acceptance. Customer shall be deemed to have accepted the Product upon Delivery unless it notifies NimbeLink in writing within ten (10) days following Customer receipt of the Product at the destination specified in the Agreement (“Receipt”) that Customer has identified any defect in the condition, product identification, quantity delivered or functioning of the Product against the then-current version of published NimbeLink Product specifications for the Product (the “Specifications”). Any use of the Product in advance of any such notice constitutes acceptance. Unless otherwise stated in the Agreement, NimbeLink may fill Orders through partial shipments. Customer shall inspect the condition of packaging upon Receipt and claim directly from the shipper for any identified damage.
7. Payment. All amounts due for Products and associated charges will be invoiced by NimbeLink upon Delivery and payment by Customer to NimbeLink in United States Dollars according to the instructions set forth in the invoice shall be due thirty (30) days after the invoice date. Late payment charges equal to one percent (1%) of any amounts not paid when due shall accrue and be payable by Customer for each calendar month in which those amounts remain unpaid, subject to any limits on such charges at law. NimbeLink retains a purchase money security interest in all Products purchased under an Order until the purchase price and associated charges are paid in full. In the event of Customer’s failure to pay invoices when due, NimbeLink shall have the rights of a secured Party, in addition to other remedies available to it. Customer shall reimburse NimbeLink for all costs and fees incurred by NimbeLink in collection of past due amounts.

8. Warranty and Returns

- A. Limited Warranty. Subject to the remaining provisions of these Terms, NimbeLink warrants to Customer only, and not directly to customers of Customer or others, that the Products will conform to the applicable Specifications in all material respects and be free of defects in materials or workmanship for a period of one (1) year beginning on the date of Delivery of that Product. NimbeLink does not warrant that any software incorporated in the Products will be error-free. NimbeLink shall not have any warranty obligation for Products: (i) identified on the NimbeLink quote as “pilot” “trial use”, “beta” or similar designation, (ii) not fully tested by NimbeLink at the written direction of Customer, (iii) damaged following Delivery (in shipping or otherwise), (iv) altered by Customer or others in any manner, (v) used in any manner inconsistent with the Agreement or the Specifications for that Product, or (vi) caused to fail by a product or service not provided by NimbeLink. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH ABOVE ARE THE ONLY WARRANTIES MADE BY NIMBELINK WITH RESPECT TO THE PRODUCT; ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED ARE HEREBY EXCLUDED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- B. Return Procedures. If Customer believes a Product is subject to a warranty claim, Customer shall contact NimbeLink through its web-site or other published support procedures and provide the information and follow the commercially reasonable tests identified by NimbeLink as designed to confirm whether a defect exists. If the problem persists, NimbeLink shall issue a Return Material Authorization (“RMA”) and Customer shall return the Product by prepaid shipping at its cost to NimbeLink according to the instructions in the RMA. Promptly upon receipt, NimbeLink will perform factory acceptance tests and similar methods to replicate or confirm the presence of the reported defect. If defects are confirmed, NimbeLink shall, in a prompt, commercially reasonable time, at its option either: (i) repair the Product, (ii) replace the Product with a functionally equivalent Product meeting the Specifications, or (iii) if repair or replacement is not commercially feasible as reasonably determined by NimbeLink, refund to Customer the purchase price of the Product. Repaired or replacement Products may be re-conditioned or new and will be covered by the remaining term of the original warranty term for the defective Product. Risk of loss to Products returned by Customer will remain with Customer except when in the possession of NimbeLink. Title to all replaced or refunded Products will vest in NimbeLink upon Delivery of the replacement or payment of the refund. If no defects are identified, NimbeLink shall notify Customer of that circumstance in writing. Product returned to NimbeLink without a valid RMA will be shipped back to Customer unopened at Customer’s cost. NimbeLink will return all repaired, replacement, or non-defective Products by prepaid shipping at its cost to Customer according to original shipping instructions, or agreed updated instructions and will bill those charges to Customer for unauthorized returns only. The remedies set forth in this Section are the exclusive remedies available to Customer for any claims related to the condition, use or functioning of the Products.

9. Limitations of Damages and Remedies. THE LIABILITY OF NIMBELINK FOR ANY CLAIMS, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE, ARISING FROM OR RELATING TO THE AGREEMENT OR THE PRODUCTS ARE LIMITED TO DIRECT DAMAGES INCURRED BY CUSTOMER NOT EXCEEDING THE PURCHASE PRICE PAID FOR THE PRODUCTS INVOLVED IN SUCH CLAIM. IN NO EVENT WILL NIMBELINK BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, AND THE PRICES OF THE PRODUCTS ARE SET AS A CONSIDERATION FOR THESE LIMITS.

IN ADDITION TO THE PRECEDING LIMITS, NIMBELINK FULLY DISCLAIMS ANY LIABILITY OF ANY TYPE, WHETHER EXPRESS OR IMPLIED, ARISING FROM OR RELATING TO THE USE OF THE PRODUCTS IN APPLICATIONS WHERE FAILURE OF A PRODUCT COULD RESULT IN LOSS OF LIFE, SERIOUS PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE INCLUDING, BUT NOT LIMITED TO MEDICAL DEVICES, LIFE SAFETY APPLICATIONS, CONTROLS IN NUCLEAR FACILITIES, AND AIR TRAFFIC CONTROL APPLICATIONS; THE PRODUCTS ARE NOT INTENDED FOR USE IN SUCH APPLICATIONS.

10. Intellectual Property. Except as expressly provided in these Terms or other provisions of the Agreement, the sale of Products does not constitute a grant of any license in or other right to use any patent, copyright, trademark or other proprietary right (“IP”) of NimbeLink or its suppliers, other than the right of Customer to use the Product and its documentation as supplied by NimbeLink for uses consistent with the Specifications and the Agreement, including transfer of such rights to any customer of Customer acquiring the Products. All other rights associated with the IP are expressly reserved by NimbeLink. Customer shall not remove or alter any trademark, copyright notice or other designation of IP interest contain in or on the Product or the documentation or other material supplied by NimbeLink to

Customer. Except as separately permitted by law, Customer shall not disassemble, modify, create derivative works from or re-distribute separate from the Product any software contained within the Product.

11. Export and Compliance. Customer acknowledges that the Products are subject to U.S. export and re-export control regulations and may be subject import regulations of other countries and agrees to fully comply with all such regulations applicable to its use of the Products. Each Party confirms and agrees to maintain compliance with all laws and regulations applicable to it in any way related to the Products or the Agreement, including, without limitation, labor laws and regulations and anti-bribery laws such as the U.S. Foreign Corrupt Practices Act.
12. Indemnities. Customer hereby indemnifies and agrees to hold NimbeLink, its shareholders, employees, officers, directors, agents, affiliates and suppliers harmless from any claims and resulting costs, expenses, loss of damage related to the use of the Products in any manner inconsistent with the Agreement or Specifications or resulting from any failure of Customer or its customers to comply with applicable laws, regulations or industry standards for product safety applicable to their use of the Products.
13. Performance. Each Party agrees to perform its obligations under the Agreement using diligent commercially reasonable efforts, but the performance of each Party will be excused only for the duration of any condition or event outside of its reasonable control making performance commercially impractical such as disruptions due to natural disasters, acts of war, riots, strikes or supply chain shortages or delays.
14. Resolution of Disputes; Controlling Law. If either Party asserts the other has failed to perform its obligations under the Agreement, or asserts any other claim arising from or relating to the Products (a "Claim") it may provide written notice to the other Party specifying the basis for that Claim; if such circumstances are not fully corrected within twenty (20) days after delivery of that notice, the claiming Party may commence proceedings to resolve that Claim as provided in this Section. All Claims shall be governed by the laws of the State of Minnesota without reference to choice of law or conflict of law principles. The Parties each consent to personal jurisdiction within the State and Federal courts for Hennepin County, Minnesota as the exclusive jurisdiction for bring any Claims. Any Claim in any form based on any cause of action or legal theory must be brought within one (1) year after the date the cause of action underlying that Claim first accrued.
15. Electronic Interchange; Notice. Each Party agrees that notices provided to the other related to the Agreement will be valid if sent by email to authorized addresses set forth in the Agreement (notwithstanding any failure of the recipient's email system, spam filters or similar impediments) or by courier service or regular U.S. mail to the authorized address set forth in the Agreement or through subsequent notice to the other Party. Emails constitute writings and electronic facsimiles of original signatures constitute written approval for purposes of the Agreement.
16. General. The Agreement constitutes the entire agreement between the Parties hereto with respect to each covered Order and supersedes any and all prior agreements, discussions, negotiations, arrangements, or understandings, whether written, oral or implied, with respect to the subject matter of the Agreement. This Agreement may not be modified or amended without the prior written consent of each Party for accepted Orders as evidenced by a mutually signed written amendment hereto. NimbeLink may alter these Terms at any time and such alternations will apply to any Orders accepted after the date of that modification. Should any one or more parts of this Agreement be declared invalid through arbitration or by any court of competent jurisdiction for any reason, such decisions shall not affect the validity of any remaining portions, which shall remain in full force and effect as if this Agreement had been executed with the invalid parts thereof eliminated. The relationship between the Parties under this Agreement is that of independent contractors. This Agreement does not grant authority for either Party to act for the other in any agency or any other capacity nor to make commitments of any kind for the account of or on behalf of the other Party. The employees or agents of one Party shall not be deemed to be employees or agents of the other Party for any purpose. Except in connection with a change of control event such as a merger or the sale of substantially all the business assets of a Party, neither Party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of each Party and their respective successors and permitted assigns. Failure to insist upon strict compliance of any of the terms of the Agreement shall not be deemed a waiver of such term.