

NIMBELINK CORP.
PURCHASE ORDER TERMS AND CONDITIONS

1. Applicability. These Purchase Order Terms and Conditions (the “Terms”) apply to and govern all purchases of products (“Products”) and services (“Services”) by NimbeLink Corp. (“NimbeLink”) from vendors identified in purchase orders issued by NimbeLink (“Vendor”) except to the extent these Terms have been modified or superseded explicitly under any other agreement signed in writing by an officer of NimbeLink.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 Vendor are each a “Party” and are referred to collectively as the “Parties” in these Terms.
2. Purchase Orders. NimbeLink may order Products or Services by issuing purchase orders (“Orders”). Orders will be binding upon the Parties through written acceptance by Vendor or by Vendor beginning fulfillment of the Order. The agreement between the Parties for any Order (the “Agreement”) consists of: (i) these Terms; (ii) the Products, prices, quantities, payment and delivery terms 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 Vendor quotation, acknowledgement or other document related to the Order that are inconsistent with or additional to these Terms or other provisions of the Agreement will be binding upon NimbeLink unless expressly accepted by NimbeLink in that manner.
3. Modification of Orders. Unless otherwise specified in the Agreement, NimbeLink may modify quantities or schedules for delivery of Product under an accepted Order by delivering written notice to Vendor in the method set forth below given more than thirty (30) days in advance of the first scheduled delivery date set forth in that Order. Unless otherwise specified in an Agreement relating to an Order for Services, NimbeLink may terminate that Order at any time for its convenience upon written notice to Vendor, paying an equitably pro-rated portion of the Charges based on Service performed prior to termination.
4. Prices; Taxes and Associated Charges. All prices stated by NimbeLink are valid only within the period of validity set forth in the Order. Prices are subject to correction for clerical and typographical errors. All prices stated by NimbeLink are Delivered Duty Paid (DDP) the NimbeLink or its contractors’ facility (IncoTerms©2010) and are inclusive of: (i) 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 Vendor and will be reimbursed to NimbeLink at its cost if paid by NimbeLink. Unless NimbeLink provides Vendor with a valid exemption certificate for the destination specified in the Agreement, Vendor shall include any applicable sales or use tax as a separate line item on the invoice for the Order.
5. Shipping and Insurance. All Products will be shipped, properly packed, from Vendor or its contractor’s facility to the NimbeLink designated location using a tracked shipment means and qualified carrier selected by Vendor. Vendor shall ship in time to cause the Products to arrive at the NimbeLink designated location on or before the delivery date specified in the Order (the “Delivery Date”). Unless otherwise stated in the Order, Vendor may fill Orders through partial shipments provided all Products are delivered by the Delivery Date. Time is of the essence in this Order and failure of Vendor to meet the Delivery Date constitutes a material breach of the Agreement. NimbeLink receives title to the Products and will bear the risk of loss to Products upon receipt of the Products by NimbeLink at its designated location (“Receipt”). Vendor shall bear the costs of insurance of the Products through the time of Receipt. Vendor shall maintain at all times insurance adequate to cover all cost(s) of the Products.
6. Inspection and Acceptance. NimbeLink may inspect all Products prior to acceptance. Vendor will promptly remedy any defect in the condition, product identification, quantity delivered or functioning of the Product against the then-current version of published Vendor Product specifications for the Product or terms of this Order (the “Specifications”) identified by NimbeLink.
7. Payment. All amounts due for Products and any taxes separately payable by NimbeLink under this Order will be invoiced by Vendor to NimbeLink not sooner than the date of Receipt for Goods and completion of performance for Services. Payment by NimbeLink to Vendor in United States Dollars according to the instructions set forth in the invoice shall be due for accepted Products and Services forty-five (45) days after the invoice date.
8. Warranties. Vendor warrants to NimbeLink 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 Receipt of that Product and that the Services will be performed in a professional manner consistent with industry standards and in conformity with the Agreement and applicable Specifications. Vendor does not warrant that any software incorporated in the Products will be error-free. Vendor shall not have any warranty obligation for Products: (i) damaged following Receipt, (ii) altered or used by NimbeLink or others in any manner inconsistent with the Agreement or Specifications, for that Product, or (iii) caused to fail by a product or service not provided by Vendor.
9. Limitations of Damages and Remedies. EXCEPT AS LIMITED IN THE FINAL SENTENCE OF THIS PARAGRAPH BELOW, THE LIABILITY OF EACH OF PARTY FOR ANY CLAIMS, WHETHER BASED IN CONTRACT, WARRANTY, TORT OR OTHERWISE, ARISING FROM OR RELATING TO THIS ORDER OR THE PRODUCTS OR SERVICES ARE

LIMITED TO DIRECT DAMAGES INCURRED BY THE OTHER PARTY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE PRECEDING LIMITS DO NOT APPLY TO ANY CLAIMS TO THE EXTENT THEY ARE BASED UPON: (I) INDEMNIFICATIONS GRANTED UNDER THIS ORDER, (II) INTENTIONAL WRONGDOING OR FRAUD, (III) BODILY INJURY OR DEATH OR (IV) THE BREACH OF OBLIGATIONS RELATED TO THE CONFIDENTIAL INFORMATION OR INTELLECTUAL PROPERTY RIGHTS OF THE OTHER PARTY.

10. Intellectual Property. Except as expressly provided in these Terms or other provisions of the Agreement, the sale of Products and Services does not constitute a grant of any license in or other right to use any patent, copyright, trademark or other proprietary right ("IP") of Vendor or its suppliers, other than the right of NimbeLink to use the Product and deliverable results of the Services, along with such documentation as supplied by Vendor, for uses consistent with the Specifications and the Agreement, including transfer of such rights to any customer of NimbeLink acquiring the Products. All other rights associated with the IP or each Party are hereby expressly reserved by that Party.
11. Export and Compliance. Vendor acknowledges that the Products and Services may be subject to export and re-export control regulations and may be subject import regulations of the U.S. and other countries and agrees to fully comply with all such regulations applicable to its sale of the Products and Services. Each Party confirms and agrees to maintain compliance with all laws and regulations applicable to it in any way related to the Products, Services or this Order agreement, including, without limitation, labor laws and regulations and anti-bribery laws such as the U.S. Foreign Corrupt Practices Act.
12. Indemnities. Vendor hereby indemnifies and agrees to hold NimbeLink, its shareholders, employees, officers, directors, agents, affiliates and customers at any level of distribution harmless from any claims and resulting costs, expenses, loss of damage related to the use of the Products or Services by NimbeLink or affiliates or customers in any manner consistent with this Order, the Agreement or Specifications, including, but not limited to, any claims of infringement of the intellectual property rights of any third party and any claims resulting from any failure of Vendor or its suppliers to comply with applicable laws, regulations or industry standards for product safety applicable to 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. The exercise of any right or pursuit of any remedy under the Agreement shall not prevent of the exercise of any other right or pursuit of any other remedy available under the Agreement or controlling law.
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 though 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 alterations 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.
