

## US TERMS OF SALE AND CREDIT APPLICATION

The following are the Terms of Sale and Credit Application under which Compaq Computer Corporation sells and licenses its standard Products and Services in the United States of America to its customers and their own internal use, and not for resale. This Agreement together with any applicable addenda and attachments ("Agreement") is by and between Compaq Computer Corporation, a Delaware Corporation with a principal office at 20555 SH 249, Houston, Texas 77070, USA ("COMPAQ") and

\_\_\_\_\_, a \_\_\_\_\_ corporation with a principal office at \_\_\_\_\_ ("CUSTOMER").

**1.0 DEFINITIONS.** **1.1 "COMPAQ Equipment, Products or Software."** Refers to COMPAQ-branded Equipment, Products or Software supplied by COMPAQ. **1.2 "Designated System."** Means a computer system that is owned or controlled by CUSTOMER and designated as the system on which Software is used. **1.3 "Equipment."** Refers to hardware products (computer systems, related hardware, accessories and spare parts, but excludes Software) supplied by COMPAQ. **1.4 "Product(s)."** Refers to Equipment and Software supplied by COMPAQ. **1.5 "Price List."** Refers to the applicable price list in effect when COMPAQ accepts CUSTOMER's order. **1.6 "Quotation."** Refers to the price quotation, if any, made by COMPAQ and in effect when COMPAQ accepts CUSTOMER's order. **1.7 "Service(s)."** Refers to standard maintenance, consulting, integration or other services supplied by COMPAQ and further described in the applicable Service Descriptions and/or Statements of Work. **1.8 "Service Description" and "Statement of Work", and "Software Product Description."** Refer, respectively, to documents that describe the attributes of specific Services and Software products and that are in effect when COMPAQ accepts CUSTOMER's order. **1.9 "Software."** Refers to proprietary computer programs in object code form (including databases, license keys and new releases, updates and modifications to Software) supplied by COMPAQ. **1.10 "Supplier."** Refers to third parties that deliver Equipment and Software to COMPAQ for incorporation into Products and Services. **1.11 "Third Party Equipment", "Third Party Products" or "Third Party Software."** Refers to non-COMPAQ-branded Equipment, Products and Software supplied by COMPAQ.

**2.0 ORDERS AND DELIVERY.** All orders placed by CUSTOMER shall be subject to acceptance by COMPAQ and shall be governed solely by this Agreement. No additional or different provisions contained in CUSTOMER's purchase orders or other business forms or correspondence shall apply.

Delivery shall occur and title and risk of loss to each Product shall pass to the CUSTOMER upon delivery by COMPAQ to a common carrier for shipment.

COMPAQ fills purchase orders on a ship complete basis, however, manufacturer constraints may cause an entire order to be held when minor items are backordered. Partial orders will be made upon receipt of a letter authorizing partial shipments and their payment within Net 30-Day terms of invoice date. If payments are not authorized for partial shipments, CUSTOMER has the option of placing constrained products on a separate purchase order.

**3.0 ELECTRONIC TRANSACTIONS.** The parties agree that any orders to purchase or license Products and Services placed by CUSTOMER and accepted by COMPAQ on the Compaq.com site (including any other COMPAQ or any COMPAQ affiliate e-store site) or on a COMPAQ/CUSTOMER extranet site will create binding obligations that will be subject to this Agreement. Any such orders and acceptances properly transmitted pursuant to the instructions on the relevant site shall be considered a "writing" or "in writing" and shall be deemed for all purposes (i) to have been "signed" and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business. The parties further agree not to contest the validity or enforceability of such transactions under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby and shall be admissible if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as other business records originated and maintained in documentary form.

**4.0 PRICING and PAYMENT.** COMPAQ prices to CUSTOMER are specified in a separate attachment to this Agreement or in the Price List, Quotation, or Statement of Work, that COMPAQ designates as applicable. Prices exclude, and CUSTOMER is responsible for, all applicable custom duties, freight, sales, use, goods and services, and other similar taxes or charges. CUSTOMER is not responsible for those taxes based on the income of COMPAQ.

Payment is due in full within 30 days of the date of the invoice.

**5.0 SOFTWARE LICENSE THE FOLLOWING SOFTWARE LICENSE PROVISIONS APPLY TO COMPAQ SOFTWARE AND SERVICES UNLESS THE COMPAQ SOFTWARE OR SERVICE IS PROVIDED UNDER SHRINKWRAP OR OTHER SOFTWARE LICENSE PROVISIONS ACCOMPANYING OR APPLICABLE TO A PARTICULAR COMPAQ PRODUCT OR SERVICE IN WHICH CASE THE LATTER PROVISIONS SHALL APPLY. ALL SHRINK-WRAPPED COMPAQ SOFTWARE AND THIRD PARTY SOFTWARE LICENSED DIRECTLY BY A THIRD PARTY ARE SUBJECT ONLY TO THE LICENSE TERMS EITHER ACCOMPANYING THE SOFTWARE OR PROVIDED AT A DESIGNATED WEB SITE.**

Upon the purchase of a license for any item of COMPAQ Software, COMPAQ grants to CUSTOMER a non-exclusive, non-transferable license (except with COMPAQ's written and express permission), without right to sublicense, to use the current version of the COMPAQ Software on the Designated System pursuant to the applicable license type and Software Product Description, and for CUSTOMER's internal business use only. No ownership or title to COMPAQ Software is transferred to CUSTOMER.

CUSTOMER will not reverse engineer except to the extent that COMPAQ cannot prohibit such acts by law, decompile or reverse compile, disassemble, list, print or display any COMPAQ Software or otherwise attempt to obtain the source code or other proprietary or confidential information from any COMPAQ Software.

No COMPAQ Software or part thereof may be duplicated by CUSTOMER except that CUSTOMER may make copies only for purposes of licensed use and make one copy of any machine-readable portion solely for CUSTOMER's normal archival or security backup purposes. CUSTOMER will properly reproduce on each such copy all notices of patent rights, copyrights, trademark rights or trade secret rights in such COMPAQ Software or any part thereof.

Products may be used by CUSTOMER's employees and agents who have agreed to these license terms and use the COMPAQ Software on CUSTOMER's behalf. CUSTOMER shall be responsible for any breaches of these license terms by its employees and agents.

CUSTOMER will maintain records matching the use of the Products to the license grants and make records available to COMPAQ or the third party developer upon reasonable notice. The owner or developer of the proprietary technology in the Products may enforce these license terms.

CUSTOMER may terminate the license for any COMPAQ Software together with the obligation to pay further applicable license charges, effective 30 days after the notice of termination is received by COMPAQ.

Upon the termination of any license granted hereunder for any item of COMPAQ Software for any reason, all rights of CUSTOMER to use the item of COMPAQ Software will cease, and

- CUSTOMER will immediately destroy or return such COMPAQ Software, all back-up copies, and portions or derivative works thereof.
- Upon request, CUSTOMER will promptly certify to COMPAQ in writing, that all copies of the COMPAQ Software have been returned to COMPAQ or destroyed.
- There will be no refund for any license for which a fee or charge has been paid.

## 6.0 INTELLECTUAL PROPERTY AND INDEMNIFICATION

**6.1 General.** All intellectual property rights in Products and Services are owned by COMPAQ or its Suppliers and are protected by United States and foreign patents, copyright laws and international treaty

provisions. COMPAQ and its Suppliers retain all rights not expressly granted to CUSTOMER herein.

**6.2 COMPAQ-Branded Products and Software.** COMPAQ shall defend, at COMPAQ's expense, any claim brought against CUSTOMER alleging that any COMPAQ Products or Services sold or furnished hereunder infringes a patent, or copyright, or mask work right (the "Claim").

COMPAQ shall pay all costs and damages finally awarded to the third party claimants or agreed to by COMPAQ in settlement of the Claim, provided that CUSTOMER furnishes COMPAQ with prompt written notice of the Claim and provides COMPAQ with reasonable assistance and sole authority to defend or settle the Claim.

COMPAQ, at its sole option and expense, may obtain for CUSTOMER the right to continue using the COMPAQ Product or Service, replace it, or modify it so it becomes non-infringing. If such remedies are not reasonably available, in COMPAQ's sole discretion, COMPAQ shall grant CUSTOMER a credit for the COMPAQ Product as normally depreciated.

COMPAQ shall have no liability for any Claim resulting from the combination of the COMPAQ Product or Service with other products which were neither supplied nor combined with the COMPAQ Product by COMPAQ, or were based on any alteration or modification of the COMPAQ Product.

This Section 6.0 states the entire liability of COMPAQ for claims of infringement by COMPAQ Products and Services supplied by COMPAQ.

**6.3 Third Party Products and Services.** Any claims of infringement relating to Third Party Products and/or Services shall be made directly to such third party. If CUSTOMER informs COMPAQ of a claim of infringement relating to Third Party Products, COMPAQ shall inform such third party of the claim.

**7.0 WARRANTY. THE FOLLOWING WARRANTY PROVISIONS APPLY TO ALL PRODUCTS AND SERVICES UNLESS OTHER WARRANTY PROVISIONS ACCOMPANYING A PARTICULAR PRODUCT OR SERVICE ARE PROVIDED BY COMPAQ, INCLUDING ITS LIMITED WARRANTY STATEMENT, IN WHICH CASE THE LATTER PROVISIONS SHALL APPLY TO SUCH PRODUCT OR SERVICE.**

**7.1 COMPAQ Equipment.** COMPAQ warrants that COMPAQ Equipment is free from defects in workmanship and material under normal use in accordance with the applicable COMPAQ specifications. Any non-conformance must be reported during the warranty period specified in the Price List, Quotation, or documentation accompanying the COMPAQ Equipment. COMPAQ Equipment may be manufactured using some refurbished components or may have been used internally for reliability or performance testing. Spare parts may be refurbished.

**7.2 COMPAQ Software.** COMPAQ warrants that COMPAQ Software, if designated as warranted in the Price List, Quotation or documentation accompanying the COMPAQ Software, will substantially conform to the applicable Software Product Description or documentation accompanying the COMPAQ Software. Any non-conformance must be reported during the warranty period specified in the Price List, Quotation, or documentation accompanying the COMPAQ Software. All Software not expressly designated as warranted is provided "AS IS."

**7.3 Services.** COMPAQ warrants that Services delivered by COMPAQ will conform at the time of delivery to the applicable Service Description or Statement of Work.

**7.4 Third Party Products** COMPAQ does not warrant Third Party Products which COMPAQ distributes "AS IS" unless otherwise specified in the Price List, Quotation, or documentation accompanying the Third Party Products. Third Party Products may be warranted by the third party as specified in the documentation accompanying the Third Party Products.

**7.5 Compatibility.** COMPAQ will not be responsible for compatibility of products or software not manufactured or supplied by COMPAQ.

**7.6 Commencement of Warranty.** The above warranties will commence upon delivery of the Product or completion of the Service or as stated in the applicable Service Description.

**7.7 Exclusions .** The above warranties do not apply to Products from which the serial numbers have been removed, or to conditions resulting from improper use, accidents, external causes, including installation, relocation of hardware, service or modifications not performed by COMPAQ or its authorized service providers, or operation outside the environmental parameters specified for the Product. Services, including those related to Product or Service warranties, may not be performed if

COMPAQ reasonably believes conditions at the CUSTOMER's site represent a safety or health risk.

COMPAQ and its Suppliers do not warrant that Products will operate in all combinations of hardware and software which may be selected for use by CUSTOMER or that the Products' performance will be error-free or uninterrupted. CUSTOMER is responsible for ensuring that back up copies of all Software and data are made. Unless otherwise agreed to by the Parties, COMPAQ assumes no responsibility or makes no warranty for the sizing, specific configuration, functionality or performance of an integrated system.

**COMPAQ MAKES NO OTHER WARRANTIES EXPRESS OR IMPLIED, AND DOES NOT WARRANT THE PRODUCT'S PERFORMANCE WITH ANY THIRD PARTY PRODUCT. THE WARRANTIES CONTAINED IN THIS AGREEMENT ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.**

**7.8 Warranty Remedies.** COMPAQ will provide the following exclusive warranty remedies provided CUSTOMER promptly notifies COMPAQ during the specified warranty period, of any non-conformance to the above warranties.

COMPAQ will repair or replace defective COMPAQ Equipment in the manner specified in the Price List or documentation accompanying the COMPAQ Equipment.

COMPAQ will remedy warranted COMPAQ Software in the manner specified in the Price List or documentation accompanying the COMPAQ Software.

COMPAQ will remedy non-conforming Service delivered by COMPAQ provided CUSTOMER promptly notifies COMPAQ within thirty days (30 days) after the performance of the Service of any nonconformance.

If, in COMPAQ's opinion, COMPAQ is unable to otherwise remedy the warranty non-conformance, COMPAQ may accept return of the COMPAQ Equipment or COMPAQ Software and refund the purchase price, or refund a portion or the entire purchase price of the Service.

**8.0 LIMITS OF LIABILITY.** COMPAQ will be liable for direct damages up to the charges paid to COMPAQ for the Product, the license fee for Software and/or the annual charge for the Service that is the subject of the claim. All such damages must be determined by a court of final jurisdiction to have been directly caused by COMPAQ. The foregoing limitation will not reduce COMPAQ's obligations under Section 6, Intellectual Property and Indemnification, or COMPAQ's liability for bodily injury.

In no event shall either party be liable for any incidental, indirect, special, or consequential damages to the other arising out of this Agreement or any order under this Agreement, or any loss of data, use or profits.

**THE REMEDIES IN THIS AGREEMENT ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES AND THE LIMITATIONS OF THIS SECTION WILL APPLY TO ALL FORMS OF ACTION WHETHER ARISING UNDER CONTRACT, TORT OR OTHERWISE.**

**9.0 COMMENCEMENT DATE AND TERMINATION.** The commencement date of this Agreement is the date signed by COMPAQ below. This Agreement may be terminated in whole or in part by either party for any reason upon 30 days prior written notice to the other party.

**10.0 SERVICE MATERIALS.** Service materials, including proprietary Software tools and associated documentation used by COMPAQ or a service provider authorized by COMPAQ in the delivery of Services, remain the exclusive property of COMPAQ. CUSTOMER may use the service materials only for activities relating to the delivery of, and only during the term of, the applicable Services. Use of proprietary Software tools is subject to applicable license terms. CUSTOMER may not modify, remove or transfer the Service materials or make them or any resultant diagnosis or system management data available to other parties without COMPAQ's prior written consent. Upon termination of the applicable Services, CUSTOMER will at COMPAQ's option destroy or return all Service material in its possession. Replacement parts may be new or refurbished. Replaced parts become the property of COMPAQ or the service provider.

**11.0 CREDIT TERMS.** CUSTOMER hereby authorizes COMPAQ to make such inquiries as necessary to obtain credit information and authorizes CUSTOMER's bank(s) of record to release credit information regarding CUSTOMER's account(s).

Upon non-payment of any indebtedness when due, COMPAQ may declare the entire balance of all indebtedness to be in a default. Upon notice to CUSTOMER, the entire balance of all indebtedness shall become immediately due and payable. At COMPAQ's option, the balance due may be subject to interest charges up to the legal maximum.

Any and all information, to include financial statements, now or hereafter supplied by CUSTOMER are certified by Customer to be true and correct.

Product and Services are only committed to credit approved orders based on Product availability.

Should it be necessary to assign the account balance to a licensed collection agency or attorney for legal action, all subsequent collection charges and legal fees shall be paid by the applicant.

A request to re-invoice product after shipment is subject to an additional 5% charge and payment is due upon Net-30 Day terms from the first invoice date or receipt of re-invoice, which ever is first.

Unless already provided, CUSTOMER agrees to provide the information in the Credit Information Attachment to this Agreement.

**12.0 GENERAL**

**12.1 Entire Agreement.** This Agreement supercedes any prior written or oral communications or representations by either party with respect to the Products or Services purchased under this Agreement. All applicable documents referred to in this Agreement are incorporated into this Agreement and are available from COMPAQ upon request.

**12.2 Amendments .** No modifications to this Agreement will be binding on either party unless made in writing and signed by both parties.

**12.3 Site Access.** Any CUSTOMER site access requirements shall not be enforceable to increase the obligation or liabilities or reduce the rights under this Agreement of COMPAQ, its employees or subcontractors.

**12.4 Assignment.** CUSTOMER may not assign or transfer any of its rights or obligations under this Agreement without COMPAQ's written consent. COMPAQ may engage authorized resellers or use subcontractors to provide Products and Services hereunder.

**12.5 Use of Product.** COMPAQ's Products are manufactured for standard commercial use and are not intended to be sold or licensed for use in critical safety systems or nuclear facilities.

**12.6 Export Statement.** Products acquired under this Agreement may be subject to U.S. and other government export control regulations. CUSTOMER agrees to will comply with those regulations whenever they export or re-export controlled Products or technical data obtained from COMPAQ, or whenever CUSTOMER produces any Products directly from the controlled technical data.

**12.7 Force Majeure and Contingencies Beyond a Party's Control.** Neither party shall be liable for the failure to perform any of its obligations under this Agreement if such failure is caused by the occurrence of any act of force majeure or any other contingency beyond its reasonable control.

**12.8 Governing Law and Statute of Limitations.** This Agreement and any orders hereunder will be governed by and construed under the laws of the State of Texas. Any action brought against COMPAQ must be brought within eighteen months after the cause of action arises.

ACCEPTED AND AGREED TO BY CUSTOMER:

BY : \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ACCEPTED AND AGREED TO BY  
COMPAQ COMPUTER CORPORATION:

BY : \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

COMMENCEMENT

DATE : \_\_\_\_\_

(Date executed by COMPAQ)



## Credit Information Attachment

Thank you for considering Compaq for your technology management needs. Compaq uses the following information exclusively to evaluate your company for a line of credit. This information is held in strict confidence. **(Must be completed in full prior to processing).**

Company Name			Contact/Title		
Address			City		County
State	Zip	Phone		Fax	
A/P Contact/Title			A/P Phone		
S.I.C. Code		Internet Address			
Dun & Bradstreet Number					
Parent Company Name			City		State/Zip
Dun & Bradstreet Number					

**If your company does not report audited financial statements to Dun & Bradstreet, a copy of your latest Balance Sheet and Income Statement must be attached or fax for open account term considerations.**

Bank Reference			Contact		
Phone Number			Fax Number		
Account Number			Account Type		

Ship To Name			Address		
City			State	Zip	
Bill To Name			Address		
City			State	Zip	
SALES TAX EXEMPT?	NO	YES	IF TAX EXEMPT, EXEMPTION CERTIFICATE <b>MUST BE ATTACHED</b> FOR ALL STATES T WHICH PRODUCT IS TO BE SHIPPED		