



STERLING TERMS AND CONDITIONS OF SALE (Products)

THESE STERLING COMPUTER CORPORATION (“STERLING”) TERMS AND CONDITIONS OF SALE GOVERN BUYER’S PURCHASE OF PRODUCTS FROM STERLING. UNLESS BUYER HAS A WRITTEN AGREEMENT WITH STERLING THAT STATES OTHERWISE, STERLING REJECTS ANY TERMS PROPOSED BY BUYER THAT ADD TO OR CONTRADICT THESE TERMS AND CONDITIONS, INCLUDING ANY STATEMENT IN BUYER’S PURCHASE ORDER, AND THESE TERMS AND CONDITIONS WILL BE THE ONLY TERMS AND CONDITIONS UPON WHICH STERLING WILL SELL TO BUYER.

1. Definitions.

- 1.1. “Acceptance” or “Accept” means Buyer’s acceptance of these terms and conditions by signing the Order, by written acknowledgement confirming the Order, or by retention of or payment for Products listed in the Order.
- 1.2. “Affiliate(s)” shall mean, with respect to a Party, any other company or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with such Party. For the purposes of this definition, the term “control” of an entity shall mean the power to direct or cause the direction of the management and policies of such entity whether through ownership, by contract, or otherwise.
- 1.3. “Buyer” means the person or entity identified on the face of the Order with whom Sterling is contracting.
- 1.4. “Order” means a statement of work, purchase order, or other proposed agreement and includes these Sterling Terms and Conditions of Sale and attachments, exhibits, and other items specifically referenced in or attached to the Order, and any subsequent changes or modifications.
- 1.5. “Party” or “Parties” means Sterling and Buyer individually or collectively, as the context requires.
- 1.6. “Product(s)” means those goods, supplies, software licenses, services, equipment, data, materials, items, parts, components or assemblies, and any incidental services described in the Order.
- 1.7. “Buyer” means the Party with whom Sterling is contracting under the Order.

2. Business Ethics and Conduct. Buyer shall conduct its business in an ethical manner and shall avoid any business practices that might reasonably be perceived as deceptive, misleading, or otherwise improper. Buyer shall comply with standards that meet or exceed the Sterling Buyer Code of Conduct, a copy of which is available on the Sterling T&C webpage at <https://sterling.com/termsconditions>.

3. Information Security Requirements. To the extent the Parties exchange personal data such as names, contact information, or other identifying information, the Parties shall comply with the Sterling Information Security Requirements, a copy of which is available on the Sterling T&C Webpage at <https://sterling.com/termsconditions/>. Each Party shall comply with applicable data protection, information security, and privacy laws, including the California Consumer Privacy Act (CCPA) and the European Union (EU) General Data Protection Regulation (GDPR).

4. Order Acceptance

- 4.1. The Order is Sterling’s offer to Buyer to sell the Products described therein. These terms and conditions may be modified only by written instrument executed by both Parties. The Order may be signed electronically by either Party.



4.2. If Buyer identifies any term or condition of the Order to be incomplete, inaccurate or inconsistent, whether upon acceptance of the Order or at any time during performance of the Order, then Buyer shall promptly notify Sterling in writing and cooperate in good faith with Sterling to resolve such discrepancies.

5. Order of Precedence

5.1. If there is any inconsistency between any terms of the Order, the inconsistency shall be resolved by giving precedence in the following order:

5.1.1. OEM terms and conditions passed through to Buyer by Sterling, including End User License Agreements

5.1.2. The statement of work or purchase order

5.1.3. Other documents specifically referenced in the Order

5.1.4. These Sterling Terms and Conditions of Sale

6. Assignment

6.1. Neither an Order nor any right or interest thereunder may be assigned, delegated, or otherwise transferred by Buyer, in whole or in part, without Sterling's prior written consent. Any purported assignment or transfer without Sterling's consent will be void. Buyer represents that it is the end user of Products and shall not resell, lease, or otherwise allow Products to be used by persons or entities other than Buyer and its employees.

6.2. Sterling may make direct settlements or adjustments in price with Buyer under the terms of the Order notwithstanding any assignment of claims for money due or to become due under the Order and without notice to the assignee.

7. **Cancellation and Returns.** Buyer may not cancel an Order, in whole or in part, without Sterling's prior written agreement. Products purchased, licensed, distributed, or otherwise provided by or through Sterling are subject to Sterling's return guidelines, located at <https://sterling.com/contact/return-information/> which guidelines are incorporated herein by reference. Orders are also subject to the terms and conditions (if any) imposed by the applicable manufacturer or provider of the Product ("**OEM Terms**"). Sterling shall note applicable OEM Terms in the Order. If Buyer cancels an Order without obtaining Sterling's prior written agreement, Buyer shall be liable for all unpaid charges and sums due to Sterling and shall reimburse Sterling for all costs, including reasonable attorney's fees and costs, suffered or incurred by Sterling as a result of the cancellation, including any incidental, exemplary, indirect, special, or consequential damages. The remedies provided herein shall be in addition to all other remedies available to Sterling.

7.1. Without prejudice to any other right or remedy available to Sterling, Sterling may terminate an Order or suspend further deliveries under it without liability to Buyer by giving written notice to the Buyer where: (i) the Buyer fails to pay when due amounts owed under the Order; (ii) the Buyer fails to observe or perform any provision of the Order; (iii) the Buyer makes a voluntary arrangement with its creditors or becomes bankrupt or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); (iv) an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; (v) the Buyer ceases, or threatens to cease, to carry on business; or (vi) Sterling reasonably determines that any of the events listed above is about to occur in relation to the Buyer and notifies the Buyer accordingly.



8. Payment and Price Adjustments

- 8.1. Where Sterling extends credit to Buyer, payment terms are net 30 days unless stated otherwise in the Order. Buyer shall pay cash in advance where Sterling has not extended credit. Buyer shall pay interest on past due balances at the rate of one and one-half percent (1.5%) per month from the day following the due date until payment is received in full. Sterling may suspend further deliveries to Buyer until Buyer has paid all past due amounts. Payment must be made to the address on the invoice. Unless stated otherwise in the Order, Buyer is responsible for shipping and installation costs. Sterling is not responsible for misdirected payments or other damages or losses attributable to Buyer's failure to use reasonable security measures when making payments.
- 8.2. Prices provided in quotes or estimates may be updated frequently to reflect fluctuations caused by supply chain volatility. Prices are subject to change and are not final until stated in the Order.
- 8.3. Buyer may not set off amounts owed to Sterling under the Order against amounts Buyer asserts are due it under other transactions with Sterling.

9. Limited Warranty

- 9.1. Sterling is a global technology solutions provider and not the manufacturer of products. Accordingly, Sterling makes no warranties with respect to Products. Any Product warranty and rights to indemnification for claims or losses related to a Product must come from the manufacturer. To the full extent authorized, Sterling will pass through to Buyer any transferable Product warranties, indemnities, and remedies of the manufacturer.

10. Governing Law

- 10.1. The Parties agree that, regardless of the place of performance of the Order, any dispute or claim arising out of or in connection with the Order, its subject matter or formation (including non-contractual disputes or claims) will be governed by, and construed and enforced in accordance with, the Laws of the State of South Dakota, without giving effect to its conflict of law principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to the Order.

11. Disputes

- 11.1. Any dispute arising under or in connection with the Order with respect to the rights, duties, or obligations of the Parties shall be submitted in writing for resolution to ascending levels of management of the respective Parties.
- 11.2. If a dispute cannot be resolved to both Parties' mutual satisfaction, after good faith negotiations, within 90 days from the date the written claim is received by the other Party, or such additional time as the Parties agree upon in writing, either Party may bring suit. If federal courts have subject matter jurisdiction to resolve a dispute, the Parties agree that the dispute shall be brought only in a federal district court in the State of South Dakota. The Parties waive any objection based on lack of personal jurisdiction, or improper or inconvenient venue.
- 11.3. To the maximum extent permitted by law, the Parties waive any right to a jury trial.
- 11.4. Sterling is not liable for lost profits, incidental or consequential damages arising under or in connection with the Order, even if Sterling was aware of the possibility that such loss or damage might be incurred by Buyer. Sterling's liability on any claim, of any kind and for any loss or damage arising out of, connected with or resulting from the Order, or from the performance or breach thereof shall, in no case, exceed the price allocable to the Products, or unit thereof, which gives rise to the claim. Sterling shall not be liable



for penalties of any kind. Any action resulting from any breach on the part of Sterling as to the Products delivered hereunder must be commenced within one year after the cause of action has accrued.

12. Taxes and Duties

12.1. The Order does not include applicable foreign and domestic federal, state, and local taxes, duties, tariffs, and similar fees (“Taxes”) levied upon, or measured by, the sale, the sales price, value added or use of Products associated with the Order. Buyer shall pay all Taxes due under the Order.

13. Indemnification

13.1. Buyer shall indemnify, defend, and hold harmless Sterling, its directors, officers, employees, consultants, agents, Affiliates, successors, and permitted assigns (“Indemnitees”), from and against all costs, losses, expenses, damages, claims, suits, or any liability whatsoever (including attorneys’ fees), arising out of or relating to Buyer’s alleged or actual acts or omissions under the Order or in the use of Products provided by Sterling under the Order. If Buyer fails to indemnify, defend and hold harmless Indemnitees as provided in this clause, then Buyer shall pay for any damages, attorney’s fees, and any other fees, costs, and expenses that may be incurred by Sterling in any action to enforce the provisions of this clause.

14. Excusable Delay – Force Majeure

14.1. Neither Party shall be liable for any failure to perform due to any cause beyond its reasonable control and without its fault or negligence. Such causes include, but are not limited to: (1) acts of God or of the public enemy; (2) acts or failure of any government in either its sovereign or contractual capacity; (3) fires, floods, epidemics, terrorism, quarantine restrictions, strikes, freight embargoes, nuclear incident, or any other act or event beyond reasonable control and without the fault of either Party. In the event that performance of the Order is hindered, delayed, threatened to be delayed, or adversely affected by causes of the type described above, the Party whose performance is so affected shall immediately notify the other Party in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and the Order may be completed with such adjustments to delivery schedule as are reasonably required by the existence of such cause or the Order may be terminated for convenience.

15. Security Interest. Sterling reserves a security interest in Products sold and the proceeds thereof, in the amount of its sales price. Default by the Buyer under the Order with Seller will result in Seller’s right to repossess the Products sold under the Order and without liability to Buyer. These security interests will be satisfied by payment in full. Upon Sterling’s request, Buyer shall promptly execute financing statements and other instruments which Sterling may request to perfect its security interest.

16. Notification of Status Changes.

16.1. By accepting the Order, Buyer certifies that all Buyer qualification and business information, representations and certifications applicable to the Order remain valid. If Buyer’s status under any of the applicable representations and certifications has changed, Buyer must complete and submit to Sterling revised representations and certifications prior to taking any action indicating acceptance as stated on the face of the Order.

16.2. Buyer agrees to promptly notify Sterling of any event or change in circumstances that could affect Buyer’s performance under the Order

16.3. Buyer shall notify Sterling of any proposed change in Control within thirty (30) days prior to such event. The notice shall describe in reasonable detail the proposed transaction structure and any proposed



changes to management, operations, domicile, key locations, the board of directors and/or ownership (along with a commitment to cooperate with Sterling and provide additional information reasonably requested related to such proposed change in Control). Buyer shall not effect a change in Control without prior, written consent from Sterling, such consent not to be unreasonably withheld. For purposes of the Order, "Control" means the power, directly or indirectly, to (a) vote more than fifty percent of the securities that have ordinary voting power for the election of Buyer's directors; or (b) direct, or cause the direction of, the management and policies of Buyer whether by voting power, contract, or otherwise. If a Person or Entity obtains "Control" by acquiring more than fifty percent of the securities that have ordinary voting power for the election of Buyer's directors, that acquisition may be accomplished by one or multiple transfers. For purposes of the Order, "Person or Entity" means a natural person, corporation, limited partnership, general partnership, limited liability company, limited liability partnership, joint stock company, joint venture, association, company, trust, or other organization, whether or not a legal entity, and a government or agency or political subdivision of that entity.

17. Release of Information and Advertising.

17.1. Except as required by law, Buyer shall not release to anyone outside Buyer's organization any information, or confirmation or denial of same, regarding the Order or the subject matter hereof without the prior written approval of Sterling. Requests for approval shall be made at least 15 days before the proposed date for release and shall identify the specific information to be released, the medium to be used, and the purpose for the release. Additionally, Buyer shall not use the name "Sterling" or any other Sterling trade name, or in any other way identify Sterling in any advertisement, display, news release, or other disclosure without Sterling's prior written consent. The Parties agree that in the event a news release is approved and made, such news will recognize Sterling and Buyer.

18. Partial Invalidity, Nonwaiver, Remedies

18.1. If any term or provision of the Order is held to be invalid, illegal or otherwise unenforceable, the validity, legality and enforceability of the remaining provisions or the whole of the Order will not in any way be affected or impaired thereby, and such term or provision will be deemed modified to the fullest extent possible to reflect and preserve the Parties' original intentions.

18.2. No delay or failure by either Party in enforcing any right under the Order will operate as a waiver of that right or any other right. No waiver of any breach of any provision of the Order will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions of the Order.

18.3. Each of the rights and remedies reserved by Sterling in the Order shall be cumulative and additional to any other or further remedies provided in law or equity or in the Order.

19. Relationship of the Parties

19.1. The relationship status of the Parties with respect to one another is that of independent contractors and nothing herein contained shall be construed as creating any employer/employee, agency, or other relationship of any kind. Buyer shall pay all wages, salaries, and other amounts due its employees in connection with the Order and shall be responsible for all reports and obligations for its Employees, including, but not limited to, social security and income tax withholdings, unemployment compensation, worker's compensation, and equal employment opportunity reporting. Under no circumstance shall Buyer be deemed an agent or representative of Sterling or authorized to commit Sterling in any way.



20. Complete Agreement

20.1. The Order constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements, course of dealing and understandings between the Parties. Each Party acknowledges that, in entering into the Order, it has not relied upon any oral or written statements, collateral or other warranties, assurances, undertakings or representations which were made by or on behalf of the other Party in relation to the subject-matter of the Order at any time before Buyer's Acceptance, other than those which are set out expressly in the Order. The Order may not be amended or modified, except by a written agreement referencing the Order and signed by each Party. Any use of Buyer's pre-printed forms is for convenience only and any terms included in any of Buyer's pre-printed forms, or in any order or written notification from Buyer that are in addition to or in conflict with the terms of the Order will be given no force or effect.

21. Delivery, Title, Sourcing

21.1. All Parties expressly agree that time is a material element of the Order and no acts of either Party shall constitute a waiver of this provision.

21.2. Title free of liens or encumbrances shall pass to Buyer upon Acceptance (except as otherwise specified within the Order); however, passing of title will not relieve Buyer of any obligations under the Order and will not extinguish Sterling's security interest.

21.3. All deliveries shall be strictly in accordance with the applicable quantities and schedules set forth in the Order.

22. Inspection. Unless stated otherwise in the Order, Products will be deemed Accepted upon delivery. Acceptance shall constitute acknowledgement of full performance by Sterling of all obligations under the Order.

23. Survival. All terms and conditions contained herein which, by their nature or context are intended to survive the termination of the Order, will so survive.