

# Sunhillo Corporation

## Terms and Conditions of Sale and Service Agreement

This Terms and Conditions of Sale and Service Agreement (this "AGREEMENT") applies to all quotations and offers made by, and purchase orders accepted by, Sunhillo Corporation ("SUNHILLO") and, to the extent of any conflict with other written or oral terms or conditions relating to the subject matter hereof, takes precedence over those other terms and conditions, whether made by any customer or prospective customer (hereinafter "BUYER") or SUNHILLO. Any additional or different terms and conditions contained in any prior request for quotation or that may be contained in any purchase order shall be deemed objected to by SUNHILLO without further notice of objection and shall be of no effect nor under any circumstances be binding upon SUNHILLO unless expressly agreed to in writing by SUNHILLO. BUYER shall be deemed to have assented to all terms and conditions of this AGREEMENT if any purchase order is placed by BUYER. When applied to products which SUNHILLO licenses rather than sells, the term "BUYER" should be understood to mean "Licensee" and references to "purchase" should be understood to mean "license". BUYER is cautioned not to rely on precedence language attached to purchase orders or other documents and to bring any concerns related to terms and conditions to the attention of SUNHILLO prior to placing orders.

### 1. Quotations

Unless otherwise stated on the quotation, quotations are valid for thirty (30) days from the date issued. Quotations may not be transferred or assigned to third parties. BUYER placing an order against a quotation will signal BUYER's acceptance of these terms.

### 2. Taxes

Quoted prices do not include any taxes, now or hereafter applicable, which apply or may apply to the products sold or to a transaction. BUYER is solely responsible for all taxes now or hereafter applicable to the products sold or to a transaction. Where SUNHILLO is required by law to collect taxes, taxes will be added by SUNHILLO to the sales price when invoiced, and will be paid by BUYER unless BUYER provides SUNHILLO with proper tax exemption documentation in form and substance satisfactory to SUNHILLO.

### 3. Quantity Discounts

SUNHILLO reserves the right to review quantity discounts at any time and to revise or eliminate such discounts based on the BUYER's purchasing history, order cancellation activity, or forecast. If, as a result of such review, quantity discounts are revised or eliminated, SUNHILLO may apply revised pricing to pending or in-process orders.

### 4. Payment Terms

4.1. Payment terms for BUYER, with SUNHILLO pre-approved credit, are net thirty (30) days from the date of invoice. BUYER shall pay interest on any invoice balance unpaid after forty-five (45) days from invoice date thereof at a rate of 1.5% per month (an APR of 18%), or if such interest rate is higher than that permitted by law, the BUYER shall pay interest at the highest rate permitted by law.

4.2. SUNHILLO reserves the right to change credit terms if BUYER's financial condition changes or BUYER fails to make any payment when due.

**5. Security Interest**

BUYER hereby grants SUNHILLO a security interest in the products sold and the proceeds there from as security for payment of purchase price. If requested by SUNHILLO, BUYER agrees to execute financing statements to perfect this security interest.

**6. Title/Risk of Loss**

Title to hardware and risk of loss passes to BUYER upon delivery to shipping carrier at shipping point. Title to software products remains with SUNHILLO at all times.

**7. Delivery**

Shipping terms are FOB SUNHILLO's shipping point. SUNHILLO will select the carrier for shipments if BUYER does not. SUNHILLO reserves the right to make deliveries in installments. Delivery delay or default of any installment shall not relieve BUYER of its obligations related to previously delivered installments. Claims for shortages must be made within ten (10) days after arrival.

**8. Export Control**

- 8.1. BUYER agrees to comply with all applicable in country and U.S. export control laws and regulations, specifically including for the U.S., but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F. R. 730-774; including the requirements for obtaining any export license or agreement, if applicable.
- 8.2. BUYER shall indemnify SUNHILLO for all liabilities, penalties, losses, damages, costs or expenses that may be imposed on or incurred in connection with any violations of such laws and regulations.
- 8.3. BUYER agrees to notify SUNHILLO if any deliverable under this Contract is restricted by export control laws or regulations.
- 8.4. BUYER shall immediately notify SUNHILLO Procurement Representative if BUYER is, or becomes listed in any Denied Parties List or if BUYER's export and/or import privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency, or by any entity or agency of BUYER's own country.

**9. Installation and Acceptance**

Products that do not include installation services in the purchase/license price are deemed accepted by the BUYER upon delivery by SUNHILLO to the shipping carrier. Products that include installation services in the purchase/license price are deemed accepted by the BUYER upon successful completion of SUNHILLO's installation and test procedure. If SUNHILLO installation is scheduled or delayed by BUYER more than thirty (30) days after delivery, acceptance of the product will be deemed to have taken place on the thirty-first (31st) day after delivery to the shipping carrier.

**10. Product Returns**

Any product returned to SUNHILLO must be accompanied by a valid Return Material Authorization (RMA) number. RMA numbers may be obtained by contacting SUNHILLO's customer support organization.

**11. BUYER Initiated Cancellation/Rescheduling**

- 11.1. Standard product orders cancelled or rescheduled by BUYER forty-five (45) days or less before the scheduled ship date will be subject to a cancellation/reschedule charge no greater than twenty percent (20%) of the price of the cancelled/rescheduled items. Reschedule notices must specify a new requested delivery date no more than ninety (90) days after the originally scheduled ship date. Cancellations may affect quantity discounts.
- 11.2. Custom product orders and/or orders resulting from SUNHILLO quotations specifying "NCNR" (Non-Cancellable/Non-Returnable), may not be cancelled, rescheduled, or modified except by express written consent of SUNHILLO.
- 11.3. BUYER's refusal to accept delivery of all or any portion or installment of such custom products shall entitle SUNHILLO to recover the price of any installment of the custom product as to which delivery has been refused, the value of any work in process and the cost of any material purchased by SUNHILLO or SUNHILLO's suppliers in order to manufacture the custom products, together with SUNHILLO's incidental damages and reasonable attorney's fees in enforcing SUNHILLO's rights.
- 11.4. No cancellation by BUYER for delivery default by SUNHILLO shall be effective unless SUNHILLO shall have failed to correct such alleged default within forty-five (45) days after receipt by SUNHILLO of a written notice of default.

**12. SUNHILLO Initiated Cancellation**

- 12.1. SUNHILLO may decline to make further shipments and/or cancel BUYER's order if BUYER is in default on payment or any obligation to SUNHILLO or in the event that BUYER becomes insolvent or bankrupt, makes a general assignment for the benefit of, or enters into any arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws instituted against it. SUNHILLO may take such action without affecting SUNHILLO's rights and remedies under this AGREEMENT including, but not limited to, any right to cancellation charges and quantity discount adjustments.
- 12.2. If SUNHILLO continues to make shipments after BUYER's default, such action shall not constitute a waiver nor affect SUNHILLO's legal remedies.
- 12.3. In the event SUNHILLO is unable to fulfill an order or services, wholly or in part, because of any cause beyond its control, SUNHILLO may cancel such order without any obligation to the BUYER.

**13. Warranty - Hardware Products**

- 13.1. SUNHILLO warrants that hardware products or the hardware portion of system products will, at the time of shipment and for a period of one (1) year thereafter, be free from defects in material and workmanship and will perform substantially in conformance with SUNHILLO's applicable published specifications or with BUYER's specifications as accepted by SUNHILLO in writing.

- 13.2. Written notice of nonconformity must be received by SUNHILLO within the warranty period and the nonconforming products must be returned freight prepaid to SUNHILLO's facility no later than thirty (30) days after the warranty period expires. All returned products must be accompanied by a written statement describing the alleged nonconformity. BUYER must request a Return Material Authorization (RMA) number and receive the number from SUNHILLO Field Support authorizing return of the product to SUNHILLO, The RMA number must be included on the shipping package.
- 13.3. Certain SUNHILLO hardware products are configured for the installation of specific components by BUYER. In order for the warranty on these products to remain in effect the BUYER must utilize only SUNHILLO recommended components and strictly follow SUNHILLO recommended installation procedures. SUNHILLO shall not be liable for the nonconformance of or damage to such hardware products resulting, in SUNHILLO's sole discretion, from the installation of unapproved components and/or the use of non-recommended installation techniques.
- 13.4. In no event shall SUNHILLO be liable for damage to hardware products resulting from improper handling, misuse, neglect, improper installation or operation, unauthorized repair, or any other cause not attributable to defects in materials or workmanship on the part of SUNHILLO.

#### **14. Warranty - Software Products**

- 14.1. SUNHILLO warrants that its software products or the software portion of system products will, at the time of shipment and for a period of one (1) year thereafter, perform substantially in conformance with SUNHILLO's applicable published specifications or with BUYER's specifications as accepted by SUNHILLO in writing and be supplied on media which is free of defects in material and workmanship.
- 14.2. Written notice of nonconformance must be received by SUNHILLO within the warranty period and should include a detailed description of the failure or non-conformity. Notices of non-conformity will be forwarded to SUNHILLO's engineering department for analysis and correction. Corrections will be included in a future scheduled maintenance release of the software product.

#### **15. Warranty - General**

- 15.1. SUNHILLO'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE, AT SUNHILLO'S OPTION, TO REFUND THE PURCHASE PRICE, REPAIR, OR REPLACE THE PRODUCT. IN NO EVENT SHALL SUNHILLO'S LIABILITY TO BUYER OR TO ANY OTHER PARTY FOR BREACH OF THIS WARRANTY EXCEED THE PURCHASE PRICE PAID TO SUNHILLO FOR THE NONCONFORMING PRODUCT.
- 15.2. This warranty extends to BUYER only and may not be invoked directly by BUYER's customers.
- 15.3. SUNHILLO does not warrant that products, alone or when integrated with other components not supplied by SUNHILLO, will meet the BUYER's requirements, or that the operation of the product will be uninterrupted or error free, or that the product will inter-operate with other components not supplied by SUNHILLO.

- 15.4. Products are warranted to meet SUNHILLO's applicable published specifications or BUYER's accepted specifications, as they exist at the time of shipment. SUNHILLO does not warrant that the product will continue to conform to SUNHILLO's, BUYER's, or third party referenced specifications if those specifications are modified subsequent to the time of shipment.
- 15.5. This warranty excludes all costs of shipping, customs clearance and related charges outside the United States.
- 15.6. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **16. Intellectual Rights Indemnification**

- 16.1. SUNHILLO will indemnify, hold BUYER harmless, and defend or settle any claim made by a third party against BUYER that products, as delivered by SUNHILLO and not in combination with any other hardware or software (except hardware or software provided by SUNHILLO) infringes any U.S. patent, utility model, industrial design, copyright, trade secret, or trademark, providing that BUYER promptly notifies SUNHILLO in writing of the claim, cooperates with SUNHILLO in the defense of the claim, and grants SUNHILLO sole authority to control the defense and any related settlement.
- 16.2. SUNHILLO will pay reasonable fees and expenses associated with such defense and settlement, as well as any reasonable costs and damages finally awarded against BUYER. If such claim is made or appears likely to be made, SUNHILLO may procure the right for BUYER to continue using the product, may modify the product, or may replace it. If use of the product is enjoined by a court and/or SUNHILLO determines that none of these alternatives is reasonably available, SUNHILLO will take back the product and refund its original value, depreciated on a straight-line basis over five (5) years.
- 16.3. SUNHILLO has no obligation for any claim of infringement arising from: SUNHILLO's compliance with any design, specifications, or instructions from BUYER; modification of the product by BUYER or a third party; use of the product in a way not specified by SUNHILLO, or; use of the product with other products not supplied by SUNHILLO.
- 16.4. The foregoing states the entire liability of SUNHILLO for patent or copyright infringement. In no event will SUNHILLO be liable for incidental or consequential damages arising from infringement or alleged infringement of patents or copyrights.

## **17. Limitation of Liability**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOSS OF USE, PROFIT, REVENUE, GOODWILL OR OTHER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SALE, PURCHASE OR USE OF SUNHILLO PRODUCTS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF SUNHILLO AND ITS AGENTS FOR ALL CLAIMS (EXCLUDING CLAIMS FOR PHYSICAL INJURY OR PROPERTY DAMAGE RESULTING FROM NEGLIGENCE OR WILLFUL MISCONDUCT) SHALL NOT EXCEED THE SUM OF THE AMOUNT PAID BY BUYER TO SUNHILLO DURING THE PREVIOUS 12 MONTH PERIOD FOR THE PRODUCT THAT IS THE SUBJECT MATTER OF THE CLAIM.

## **18. Force Majeure**

A Party shall not be deemed in default of this AGREEMENT, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of the Party, provided that the Party relying upon this provision:

- gives prompt written notice thereof, and
- takes all steps reasonably necessary to mitigate the effects of the force majeure event.
- If a force majeure event extends for a period in excess of 30 days in the aggregate, either Party may immediately terminate this AGREEMENT upon written notice.

## **19. Hazardous Applications**

BUYER acknowledges that SUNHILLO products are intended for use as described in its product specification and determination of the SUNHILLO products' fit for purpose and use in any hazardous environments requiring fail safe performance, such as operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, direct life support machines, weapon systems, or any other application in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage is the sole responsibility of the BUYER.

## **20. The Waste Electrical and Electronic Equipment (WEEE) Directive**

End-user BUYERS of SUNHILLO products shipped to the EU are, as SUNHILLO's business-to-business customers, the responsible party for WEEE directive compliance. SUNHILLO encourages end-user BUYERS of SUNHILLO's products to locate proper waste disposal companies within their countries.

## **21. General**

- 21.1. Any changes in the terms and conditions contained herein must specifically be agreed to in writing by authorized representative of both parties before becoming binding on either party.
- 21.2. If any provision of this AGREEMENT is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired.
- 21.3. SUNHILLO's failure to exercise any of its rights under this AGREEMENT shall not constitute a waiver or forfeiture of such rights.
- 21.4. The headings and titles of the clauses in this AGREEMENT are used for convenience and ease of reference and do not limit the scope or intent of the clause.
- 21.5. This AGREEMENT, along with any exhibits or schedules thereto, supersedes all prior agreements and understandings, oral or written, between SUNHILLO and BUYER and is intended as the complete and exclusive statement of this AGREEMENT.
- 21.6. The prevailing party in any action or proceeding brought in connection with a breach of this AGREEMENT will be entitled to reimbursement by the other party for reasonable costs and reasonable attorney's fees.

- 21.7. Any controversy or claim arising out of or relating to this AGREEMENT or the breach thereof shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of such arbitration proceedings shall be West Berlin, New Jersey, USA for actions brought by the BUYER or, for actions initiated by SUNHILLO, a U.S. city specified by the BUYER. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- 21.8. This AGREEMENT will be governed by and construed in accordance with the laws of the State of New Jersey, USA, without regard to the conflict of laws principles thereof.