

Terms and Condition of Sale

[Terms & Conditions of Sale](#) (346 kb)

Terms and Conditions of Sale

1. General – As used herein, the term “SP” and “SPT” shall mean SALE POINT, INCORPORATED AND SALE POINT OF TEXAS, LIMITED LIABILITY CORPORATION and the term “Buyer” shall mean the purchaser of the goods, whether products, parts or supplies, under this agreement (the “Agreement”). SP AND SPT reserves the right to discontinue goods, or change the form, fit or function of goods, at any time without notice. All orders for goods accepted by SP AND SPT are on the condition that the Buyer accepts the terms and conditions contained herein, unless otherwise specifically agreed upon in writing by SP AND SPT. Any changes by Buyer to these terms and conditions or new or different terms and conditions contained in documentation provided to SP AND SPT by Buyer, or communications to SP AND SPT from Buyer in connection herewith, shall be null and void unless specifically accepted by SP AND SPT in writing. SP AND SPT failure to object to inconsistent or supplementary provisions contained in Buyer’s order or contained in other communications shall not be deemed to be a waiver of these terms and conditions or an acceptance of such provisions. No representations or warranties other than those contained herein shall be binding upon SP AND SPT unless made in writing and signed by a duly authorized officer of SP AND SPT. No oral agreement or other understanding shall in any way modify this agreement or the terms or conditions hereof. THESE TERMS AND CONDITIONS DO NOT APPLY TO REPAIR OR MAINTENANCE SERVICES. PLEASE REVIEW YOUR SERVICE AGREEMENT OR CONTACT SP AND SPT FOR TERMS AND CONDITIONS OF REPAIR OR MAINTENANCE SERVICES.

2. Acceptance of Goods – Buyer’s written acknowledgment of Buyer’s acceptance hereof or Buyer’s acceptance of delivery of all or any part of the goods sold hereunder, shall constitute Buyer’s acceptance of the terms and conditions contained herein and on the face hereof.

3. Purchase Price – The purchase price specified on the face hereof is stated in United States Dollars and is, unless otherwise specified, exclusive of any sales, use, value added, or excise taxes, duties, import or export fees or other taxes or governmental charges. All other amounts stated herein or in connection herewith, and all amounts due and payable hereunder shall be stated or shall be due and payable in United States Dollars. All amounts due hereunder are due and payable in full upon tender of delivery of the goods by SP AND SPT except as otherwise specified on the face hereof. SP AND SPT shall provide certificates of origin for goods sold hereunder when required by Buyer. SP AND SPT shall provide reasonable aid and assistance to Buyer in providing such documentation as may be reasonably required for the export or import of the goods. Buyer shall pay all sales, use, value added or excise taxes, duties, import or export fees, or other taxes or governmental charges resulting from the sale of the goods hereunder. Upon refusal to accept delivery of the goods, or upon failure to make any payment in accordance with the payment terms specified on the face hereof, SP AND SPT may, in its sole discretion and in accordance with applicable law, require Buyer to pay the entire unpaid balance of the purchase price to SP AND SPT or SP AND SPT may repossess the goods and thereby become vested as to title and all rights of ownership in the goods. If SP AND SPT repossesses the goods, SP AND SPT may treat all payments received from Buyer as rental payments.

4. Finance Charges – Buyer shall pay a finance charge on any past due amounts at a rate determined by SP AND SPT from time to time and in accordance with applicable law.

5. Delivery – All goods shall be shipped by a carrier selected by Buyer which carrier shall act as the agent of Buyer and delivery of the goods to such carrier shall constitute delivery of the goods to Buyer, unless otherwise specifically agreed. SP AND SPT may provide aid and assistance to Buyer

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in arranging the shipping of goods sold hereunder; however, SP AND SPT shall not be considered the agent of Buyer with regard to the shipment of goods. SP AND SPT shall not be liable for any loss or damage arising out of any failure or delay in delivering any goods sold hereunder, where such failure or delay has been caused by an act of God, fire, embargo, strike, or other labor strike, inability to secure materials or equipment from unusual sources, or war, terrorist acts, riot, accident, lack of the usual means of transportation, or any circumstances beyond SP AND SPT'S control not mentioned herein which delays or prevents SP AND SPT from making delivery in the usual course of business. Goods shall be shipped Ex Works Supplier's facility, Saint Paul, Minnesota (INCOTERMS 2000). SP AND SPT delivers the goods when goods are placed at the disposal of Buyer at SP AND SPT'S facility not cleared for export and not loaded on any collecting vehicle. Shipping is to be arranged by Buyer and is subject to approval by SP AND SPT. If Buyer requests assistance from SP AND SPT, SP AND SPT will ship goods via SP AND SPT'S choice of carrier and bill Buyer. Upon delivery of goods sold hereunder, any risk or loss or of damage to the goods shall pass to Buyer. Buyer shall be responsible for procuring: (i) any export permits or licenses required for export of the goods from the United States; (ii) any permits required for the shipment of goods to, or the import of goods into, the country of destination, if applicable; and (iii) any permits, authorizations or certifications required for use of the goods in the country in which the goods are used. Buyer shall comply with all applicable export control laws and regulations and shall be the Principal Party in Interest as defined in the export control laws of the United States with regard to the export or re-export of the goods. Title and all rights of ownership in the goods shall remain in SP AND SPT until such time as Buyer has made full payment of the purchase price of the goods. Buyer agrees to obtain insurance, effective at delivery and in an amount not less than the sales price of the goods set forth on the face hereof, covering the goods while in transit, and covering any form of loss of, or damage to the goods at any storage, warehouse facility, or at Buyer's office or plant, or otherwise, naming SP AND SPT as an additional insured, until such time as full payment of the purchase price of the goods has been made to SP AND SPT.

6. Cancellation – The sale of goods and shipment of goods sold hereunder is not subject to change, delay or cancellation unless SP AND SPT specifically consents in writing to any such change, delay or cancellation and Buyer indemnifies SP AND SPT against any and all loss, liability, cost, damage or expenses whatsoever resulting therefrom.

7. Security – SP AND SPT reserves the right, in its sole discretion, to require full payment for any shipment of goods sold hereunder in advance, or other security satisfactory to Buyer in its sole discretion. If Buyer fails to make payment in accordance with the terms of this Agreement, or any other agreement with SP AND SPT, or fails to comply with any provision hereof or thereof, SP AND SPT may, at its option, without liability and in addition to any other remedies available to it, cancel any unshipped portion of goods sold hereunder or stop any goods in transit until SP AND SPT receives payment of all amounts, including amounts payable under this Agreement, whether or not then due, which are owing to it by Buyer. Buyer shall in any event remain liable for all unpaid amounts. SP AND SPT shall retain a security interest in, and a lien on, all goods sold hereunder until SP AND SPT receives the full amount of the purchase price, with finance charges, if any, from Buyer. Buyer agrees to execute such additional financing statements or documents as may be necessary to file or publicly register SP AND SPT'S security interest and lien, and further authorizes SP AND SPT to do so on Buyer's behalf.

8. Trade-in Goods – (WHERE OFFERED) Delivery terms for trade-in goods for which an allowance is stated on the face hereof are F.O.B. SP AND SPT'S place of business. Any risk of loss of or damage to the trade-in goods shall remain with Buyer until such time as delivery to SP AND SPT has been made. Title and all rights of ownership in the trade-in goods shall vest in SP AND SPT at such time as the trade-in goods have been placed in the possession of the carrier, or other person or organization designated by Buyer to make delivery of the trade-in goods to SP AND SPT. Buyer agrees to obtain insurance upon the trade-in goods while in transit and agrees to name SP

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AND SPT as an additional insured while the trade-in goods are in transit. Buyer shall be responsible for payment of all freight forwarder or equivalent fees, freight, storage charges, and all other costs and expenses of delivery of the trade-in goods to SP AND SPT.

9. Claims – Any claim by Buyer against SP AND SPT for shortage or damage to the goods sold hereunder, occurring prior to delivery of the goods to the carrier, must be presented in writing to SP AND SPT within seven (7) days after receipt of shipment of the goods and must be accompanied by the original transportation bill, signed by the carrier, noting that the carrier received the goods from SP AND SPT in the condition claimed.

10. Limited Warranty –

What SP AND SPT'S Limited Warranty Covers: SP AND SPT (SALE POINT, INC AND SALE POINT OF TEXAS, LLC) warrants to a direct purchaser of Products from SP AND SPT or resellers purchasing from authorized Distributors of SP AND SPT (a "Reseller", and each of the foregoing a "Buyer"), that the Products identified on the SP AND SPT Product's Limited Warranty Period and Repair Centers information sheet, excluding drivers, software and programming product and Products subject to the manufacturer's warranty, shall be free from defects in material and workmanship for the period of time applicable to the particular Product under SP AND SPT'S standard warranty program in effect on the date of delivery of the Product (the "Limited Warranty"), as more fully set forth on SP AND SPT'S Product's Limited Warranty Period and Repair Centers (current as of the date of delivery of the Product and available from SP AND SPT on request or on SP website www.longinodist.com), from the date of delivery to a Buyer, or date of purchase by a Reseller, in normal use and service. Buyer or Reseller must provide proof of the date of the original purchase for warranty service. Extended Service ShieldSM warranty options and service plans may be purchased for an additional fee from SP AND SPT or its authorized Distributors. Copies of manufacturer's warranties are available from CRS on request.

SP AND SPT'S Limited Warranty Remedies: In the event of a claim under the foregoing SP AND SPT'S Limited Warranty, Buyer's or Reseller's sole and exclusive remedy shall be the repair or replacement (at SP AND SPT'S option) of any Products, or parts therefore, sold hereunder by SP AND SPT. All warranty claims based on SP AND SPT'S warranties shall be made directly to the original seller of the Product, either SP AND SPT or an authorized Distributor of SP AND SPT (each a "Seller") by Buyer or a Reseller. All claims regarding Products subject to SP AND SPT'S Limited Warranty must be made pursuant to CRS's Return Material Authorization ("RMA") Policy. All claims regarding Products subject to manufacturer's warranties shall be made directly to the respective manufacturer. Any replacement of the subject Products by SP AND SPT shall be with Products that are, in SP AND SPT judgment, substantially equivalent in all material respects with the Products that are replaced. Replacement Products or parts will assume the remaining warranty period of the original product purchased and covered by this Limited Warranty, if any. Any Product replaced hereunder becomes SP AND SPT property. In the event SP AND SPT determines that the Products cannot be repaired or replaced, SP AND SPT may, in its sole discretion, in lieu of such repair or replacement, refund to Buyer the purchase price paid for the Product(s). In no event shall SP AND SPT be liable for indirect, special, incidental, or consequential damages arising out of or relating to the sale or use of any Products sold hereunder or any other cause whatsoever, whether under breach of warranty, breach of contract, negligence, tort, or any other legal theory. Distributor shall provide to any Reseller purchasing goods from Distributor a copy of this Limited Warranty and obtain an acknowledgement of receipt of these terms and conditions from such Reseller. Reseller shall provide customers with copies of warranties applicable to Products sold by Reseller. Claims under any warranty provided by Reseller inconsistent with the Limited Warranty or a manufacturer's warranty shall be the sole responsibility of Reseller.

What SP AND SPT Limited Warranty Does Not Cover: This Limited Warranty does not extend to Products subject to misuse, neglect, accident, or improper installation or maintenance, improper power source, fire, water damage, static discharge, or which have been altered or repaired by anyone other than SP AND SPT or its authorized agents and representatives. This Limited Warranty does not apply to refurbished or reconditioned Products. SP AND SPT is not responsible for

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warranty service of Products with serial numbers defaced, modified or removed. Buyer or Reseller may be charged for the costs incurred by SP AND SPT or its authorized Distributor if the problem for which the warranty claim is made cannot be identified or reproduced. Any drivers, software or programming products, whether embedded in goods or provided as separate programs, are sold or licensed without warranty and are provided "AS IS, WITH ALL FAULTS". SP AND SPT will convey to Buyer or a Reseller any transferable manufacturer's warranties relating to the specific Product purchased. Any applicable Limited Warranty is not transferable to any third party. SP AND SPT reserves the right to modify warranties from time to time, with or without notice.

11. Disclaimer of Limited Warranty –

SP AND SPT MAKES NO EXPRESS OR IMPLIED WARRANTY TO BUYER, RESELLER OR ANY THIRD PARTY THAT THE PRODUCTS SOLD HEREUNDER ARE COMPATIBLE WITH ANY SPECIFIC DRIVERS, SOFTWARE, HARDWARE OR PROGRAMMING PRODUCTS, WHETHER EMBEDDED OR OTHERWISE. THE WARRANTY CONTAINED HEREIN IS EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTY, AND SP AND SPT EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY AS TO PATENT OR COPYRIGHT INFRINGEMENT OR THE LIKE, OR ANY OTHER OBLIGATION ON THE PART OF SP AND SPT. SP AND SPT SPECIFICALLY DOES NOT WARRANT THAT THE OPERATION OF ANY DRIVERS, SOFTWARE, OR PROGRAMMING PRODUCTS LICENSED HEREUNDER, WHETHER EMBEDDED IN PRODUCTS OR AS SEPARATE PROGRAMS, SHALL BE UNINTERRUPTED OR ERROR FREE OR THAT FUNCTIONS CONTAINED IN SUCH DRIVERS, SOFTWARE, OR PROGRAMMING PRODUCTS SHALL OPERATE IN COMBINATION(S) WHICH MAY BE SELECTED FOR USE BY BUYER, RESELLER OR ITS CUSTOMERS OR OTHERWISE MEET BUYER'S, RESELLER'S OR ITS CUSTOMER'S REQUIREMENTS. ANY MODELS, DRAWINGS, PLANS, AFFIRMATIONS OF FACT, PROMISES, OR OTHER COMMUNICATIONS BY ANY PARTY WITH REFERENCE TO THE PERFORMANCE OF THE PRODUCTS SOLD HEREUNDER SHALL NOT IN ANY WAY MODIFY THE WARRANTY DISCLAIMERS OR EXPRESS OR IMPLIED WARRANTIES AS SET FORTH HEREIN. BUYER OR RESELLER ACKNOWLEDGES THAT IT IS PURCHASING THE PRODUCTS SOLELY ON THE BASIS OF THE COMMITMENTS OF SP AND SPT AS EXPRESSLY SET FORTH HEREIN AS TO WARRANTIES AND HAS NOT RELIED ON ANY SAMPLES, PRINTED MATERIALS OR STATEMENTS OR UNDERSTANDINGS, WHETHER ORAL OR WRITTEN, IN MAKING ITS PURCHASE DECISION. NONE OF BUYER, RESELLER, AGENTS OR OTHER PARTIES ARE AUTHORIZED TO MAKE ANY WARRANTIES ON BEHALF OF CRS OR TO ASSUME FOR SP AND SPT ANY OTHER LIABILITY IN CONNECTION WITH THE PERFORMANCE OF THE PRODUCTS HEREUNDER.

12. Indemnification – Buyer agrees to indemnify and hold SP AND SPT and its officers and agents harmless from and against any and all loss, liability, cost, damage, or expenses whatsoever, including reasonable attorneys' fees, incident to any actual or threatened claim, action, or proceeding against SP AND SPT arising out of the purchase, use, or sale by Buyer of the goods sold hereunder, including, but not limited to, Buyer's failure to provide Resellers with a copy of these terms and conditions and obtain an acknowledgement of receipt of these terms and conditions from Resellers.

13. Limitations of Actions and Applicable Law – Any action from any breach of the terms and conditions hereof on the part of SP AND SPT or relating to the goods sold hereunder must be commenced within one (1) year after the cause of action accrues. In no event shall SP AND SPT's total liability for any or all breaches of any warranty or duty, regardless of the nature or cause of such breach, exceed the purchase price of the goods. SP AND SPT shall not be liable for any indirect, special, consequential or incidental damages arising from the breach of warranties, the failure to deliver, delay in delivery, delivery in nonconforming condition, or for any other breach of contract or duty between SP AND SPT and Buyer. In no event shall SP AND SPT be liable for any interruption

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or loss of data or recreation of data, or for any loss of business or other consequential damages, loss or expense of any kind arising in connection with the use or performance of the goods sold hereunder. This Agreement and the rights and duties of SP AND SPT and Buyer shall be determined by and governed under the laws of the state of North Carolina and State of Texas and the terms and conditions contained herein shall be construed and considered to have been made and performed in the State of North Carolina and State of Texas. The parties expressly consent to the exclusive jurisdiction of and venue in the state or federal courts located in Wake County, North Carolina for the resolution of any dispute concerning or arising out of this Agreement, or the breach of any obligation of the parties with respect to this Agreement, including any breach of warranty. The parties further agree and confirm that the United Nations Convention on the International Sale of Goods, 1980 shall not apply to the transaction set forth herein.

14. Assignment – Buyer shall not assign this Agreement without SP AND SPT prior written consent.

15. Miscellaneous – This Agreement sets forth the entire understanding between SP AND SPT and Buyer relating to the goods sold hereunder and merges all prior discussions, understandings, and documents between SP AND SPT and Buyer. Any amendment to this Agreement or waiver of any of its provisions must be in writing, refer to this Agreement, and be executed by a duly authorized representative of SP AND SPT and Buyer. Buyer shall not assign this Agreement without SP AND SPT'S prior written consent. Any waiver by SP AND SPT of a breach of any provision of this Agreement by Buyer shall not operate as, or be construed to be, a waiver of any subsequent breach. In the event any provision of this Agreement, or its application, is found to be unlawful, invalid or void to any extent, the remainder of this Agreement, and its application, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law. Section titles or other headings contained in this Agreement are for convenience only and shall not be deemed a part of the context of this Agreement.