

Rimage Corporation Purchase Order Terms and Conditions

- 1. Offer to Purchase; Entire Agreement.** The Purchase Order that accompanies or refers to these Terms and Conditions (the "Order") constitutes an offer by Rimage and its affiliates ("Rimage") to purchase the hardware or software products ("Products") and/or services ("Services") described in the Order. The Order becomes a binding contract when Supplier accepts it by acknowledging or beginning performance of the Order. Upon acceptance by Supplier, the Order, including these Terms and Conditions and any related attachments, constitutes the entire agreement between the parties with respect to the transactions contemplated in the Order. Rimage's offer can only be accepted upon the terms of the Order, including these Terms and Conditions. No different, inconsistent, conflicting or additional terms or conditions Supplier may provide in accepting or acknowledging the Order or attempting to vary the pre-printed or posted form of these Terms and Conditions shall be valid or binding upon Rimage unless a Vice President or higher level officer of Rimage expressly accepts such terms or conditions in writing. If Supplier has previously made an offer to sell the goods described in the Order to Rimage, the Order is an acceptance of such offer only on the condition that Supplier agrees to all the terms and conditions set forth herein that may be in addition or different from the terms and conditions of such previous offer.
- 2. Warranties.** Supplier represents and warrants that the Products, if applicable, (a) are the property of Supplier or that Supplier is properly licensed to grant to Rimage the rights granted to Rimage herein; (b) are free of any liens, claims or other encumbrances; (c) will be new; (d) will be free from defects in manufacture, materials, and design; (e) will function properly under ordinary use; (f) will perform in accordance with all applicable specifications and documentation for such Product for at least 38 months for hardware and 12 months for software from Rimage's acceptance thereof; (g) will be compatible with Rimage's hardware and standard operating systems and environments; (h) correctly process all date data; (i) are free from viruses; (j) comply with all applicable laws, regulations, codes and standards; and (k) do not contain any disabling codes or termination logic. Supplier represents and warrants that all Services shall (i) be performed in a timely, professional and workmanlike manner; (ii) comply with all applicable specifications and descriptions of such Services; and (iii) comply with all applicable laws and regulations, codes and standards. All equipment, materials, and articles used in the performance of the Services shall be of the most suitable grade for the purpose intended. In addition, Rimage will enjoy the benefit of Supplier's standard warranty for its Products to the extent such warranties do not conflict with or limit the warranties set forth in this Section.
- 3. Warranty Returns.** Supplier accepts financial responsibility for all costs Rimage incurs in connection with the failure of a Product or Service to comply with any warranties set forth herein. If any Product shipped under the Order fails to meet any of the warranties set forth herein, in addition to other rights available to Rimage at law or in equity, Rimage reserves the right to cancel without liability all or any portion of the Order and return the Products to Supplier, at Supplier's expense, for credit to Rimage's account, refund or reimbursement. Supplier will issue a Return Material Authorization (RMA) number within 3 working days after request by Rimage for all returned Products. If Supplier fails to issue an RMA number in a timely manner, Supplier will accept an RMA number generated by Rimage.
- 4. Delivery; Packaging; Quantity.** All Articles shall be suitably packed in a manner to secure safe delivery, to comply with carrier requirements, and to secure the lowest transportation and insurance rates. Each container must be packed, marked, tagged and shipped with an

outer label that includes the applicable Rimage Order number and "Ship To" Attention information, be accompanied by one copy of the shipping papers, and be shipped in accordance with all instructions appearing on the Order. Unless otherwise specified in the Order, no value shall be declared on any shipment. Time is of the essence in the performance of the Order. Supplier agrees to work with Rimage to achieve the lowest landed cost for delivery of Products. Unless otherwise specified in the Order, Supplier shall arrange and pay all shipping and insurance costs related to the delivery of Products to locations specified by Rimage. A packing slip must accompany each shipment and, unless otherwise specified in the Order, be shipped FOB destination for domestic shipments or DDP (Incoterms 2010) Rimage's facility or as otherwise specified in the Order. Supplier shall also pay all storage and insurance costs if the Order indicates delivery to one of Rimage's distribution centers. If Supplier fails to deliver to Rimage within 10 days of the scheduled delivery date or deliver the quantity that appears in the Order, Rimage may cancel all or any portion of the Order without liability. Supplier shall be liable to Rimage for any cost Rimage incurs as a result of Supplier's failure to deliver, including the cost of expedited delivery. Rimage may reschedule the delivery date of the Order at any time prior to the date that Supplier ships such Order. Rimage shall have no obligation to accept any Products earlier than the delivery date specified in the Order.

- 5. Title and Risk of Loss; Acceptance by Rimage.** Title and risk of loss to Products will pass to Rimage upon Rimage's acceptance of the Products. Rimage will have 30 days after receipt of the Products or completion of the Services to accept or reject a Product and/or Service. If Rimage rejects a Product and/or Service, it will notify Supplier of such rejection and will request directions as to the disposition of the Product or re-performance of the Service. Rimage reserves the right to require the Supplier to re-perform any Service that does not comply with any terms set forth herein, at no additional cost to Rimage. If Supplier fails to provide instructions for such disposition of Product, or fails to re-perform the Service within 10 days after receipt of notice from Rimage, Rimage may dispose of the Product in any manner it deems appropriate, and/or Supplier may be held liable for all costs incurred for the performance of the Service by an alternate Supplier.
- 6. Software and Documentation.** Supplier grants to Rimage and independent contractors performing services on behalf of Rimage a non-exclusive, perpetual, worldwide, fully paid-up license to use, copy, sublicense, modify and distribute (for software relating to or shipped with Rimage systems), any software Product delivered to Rimage as part of the Order or incorporated as part of any Product, and any related documentation delivered to Rimage under the Order. Supplier shall provide Rimage, at no additional charge, any updates, upgrades or new versions of software Products at least 30 days before Supplier releases such updates, upgrades or new versions to the general public. In addition, unless otherwise agreed upon by Rimage in writing, Supplier shall provide Rimage with maintenance and support 24 hours a day, 7 days a week.
- 7. Payment Terms.** Unless otherwise specified in the Order, Rimage shall pay all invoices from Supplier for Products and Services provided pursuant to the Order within 60 days from the later of Rimage's acceptance of Product or Service, or receipt of Supplier's invoice. Rimage will receive a 2% discount off any invoiced amount if Rimage or its designated agent pays Supplier within 20 days of the later of receipt of the applicable invoice or Rimage's acceptance of the Product or Service. Supplier will provide all invoices to Rimage within 60 days of the delivery of Product or the completion of Services, as applicable. Supplier's invoices must include the Rimage Order Number or the invoices may be denied for payment. Rimage reserves the right to refuse payment for any invoice issued after the 60-day period.

- 8. Taxes.** Unless otherwise specified in the Order, the prices set forth include all applicable taxes, import duties, customs clearance, applicable licenses, certifications, ratings and other authorizations and approvals (collectively, "Taxes"). All such Taxes shall be stated separately on Supplier's invoice.
- 9. Safety.** Supplier shall be responsible for all safety issues related to and during the performance of any Services and Supplier's obligations hereunder. Supplier shall ensure that its employees and the employees of its approved subcontractors are notified of and observe and abide by all safety regulations and laws including, but not limited to, those issued by Rimage.
- 10. Changes.** Rimage may make changes in the technical requirements, specifications, drawings or designs, materials, packaging, place of delivery, method of transportation, buyer-furnished property or quantities and delivery schedules by notifying Supplier in writing. Any effect on the costs or time required to perform due to such change will entitle Supplier to make a claim with Rimage for an adjustment in the price and delivery schedule as Rimage and Supplier mutually agree in writing. Any claim must be filed within 30 days after Rimage notifies Supplier of the change. Supplier's failure to file a claim within 30 days will be deemed a waiver of all such claims.
- 11. Supplier's Employees.** All personnel supplied or engaged by Supplier to perform Supplier's obligations will be deemed employees or subcontractors of Supplier and will not be considered employees, agents, or subcontractors of Rimage for any purpose, including, but not limited to, the application of any federal or state unemployment or insurance laws or workers' compensation laws, or otherwise. Supplier hereby assumes all liabilities or obligations imposed by any one or more of such laws with respect to Supplier's employees and subcontractors. Supplier assumes full responsibility for the actions of all employees and subcontractors performing Supplier's obligations under the Order and for the payment of their compensation (including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes), worker's compensation, disability benefits and the like to the extent applicable to the personnel involved. By written notice, Rimage may require Supplier to immediately remove from providing a Service any employee or subcontractor of Supplier that Rimage deems objectionable for any legal reason.
- 12. Intellectual Property Rights.** Supplier represents and warrants that all Products delivered and Services performed pursuant to the Order, and the sale or use thereof by Rimage, including use in any foreseeable combination with other products, do not infringe any patent, trade secret, copyright, trademark, or other intellectual property right of any third party. If Rimage is enjoined from using or selling a Product or Service, in addition to any other remedies available to Rimage at law or in equity and the indemnity described in Section 13 below, Supplier shall, at its expense, either (i) replace or modify the infringing portion of the Product or Service so it becomes non-infringing, yet functionally equivalent; (ii) procure for Rimage the right to continue to use the infringing Product or Service; or (iii) refund all fees paid by Rimage.
- 13. Indemnity.** Supplier shall indemnify, defend and hold Rimage harmless from and against any and all claims, demands, damages, liability, loss, cost, expense and attorney's fees which Rimage may incur, suffer or be required to pay arising out of or related to the Products or Services delivered pursuant to the Order or Supplier's performance or non-performance under the Order or these Terms and Conditions, including but not limited to any actual or alleged breach of Supplier's representations or warranties. Supplier shall also

reimburse Rimage for any and all expenses and costs (including attorneys' fees) incurred in enforcing any provision of the Order or these Terms and Conditions.

- 14. Insurance.** Supplier shall maintain commercial general liability, product liability, professional liability, automobile liability, property damage, and worker's compensation and employer's liability insurance coverage with limits of liability sufficient to cover its obligations under the Order or as Rimage may reasonably specify. Upon Rimage's request, Supplier shall also furnish Rimage with insurance certificates which (i) identify Rimage, its directors, officers, employees, agents, successors and assigns as additional insureds; (ii) indicate that the insurer has insured, under the contractual liability section of the liability insurance policies, the specific liabilities assumed by Supplier under the Order; (iii) includes the insurer's commitment to give Rimage not less than 30 days prior written notice in the event of an adverse change in Supplier's coverage; (iv) indicate Supplier's insurance is primary without right of contribution from any insurance carried by Rimage; (v) are on occurrence form; and (vi) include a waiver of subrogation against Rimage or its insurer(s). If Supplier provides Services to Rimage, Supplier must provide a copy of its insurance certificate prior to beginning performance of the Service.
- 15. Hazard Communication.** Supplier shall appropriately label all Products that contain hazardous chemicals or materials in accordance with all applicable international, federal, state or local standards or regulations that may apply. Supplier shall comply with systems that may be adopted by Rimage to ensure compliance with any such standards. Supplier shall as expeditiously as possible provide all information requested by Rimage regarding hazardous chemicals or materials contained in or used to manufacture Products for Rimage. Supplier acknowledges that Rimage relies on Supplier to verify the validity and fitness of any specifications provided to the Supplier for fabrication of the Product such as: blue prints, technical specifications, electronic media, reference materials, samples, hazardous chemicals and materials restrictions etc., whether provided to Supplier by Rimage or provided through an authorized third party.
- 16. Confidentiality.** Except for information that becomes public without any wrongdoing of the receiving party or that is independently developed by the receiving party, neither party shall use for its own benefit or disclose to any third party the confidential or proprietary information of the other party without the other party's prior written consent. Any specifications, drawings, samples, or other data furnished by Rimage or created by Supplier for Rimage shall be treated by Supplier as the confidential information of Rimage, shall remain Rimage's property and shall be returned to Rimage upon request. If Supplier and Rimage have signed a non-disclosure agreement, such agreement is incorporated by reference as if fully set forth herein.
- 17. Pricing.** **The prices shown on the Order for the Products or Services are complete and no additional charges may be added without Rimage's express written consent, including but not limited to, transportation to the F.O.B. point, packaging, customs, duties, taxes, storage, insurance, boxing, crating and carriage expenses. Supplier represents and warrants that the price charged herein is not more than the ceiling price, if any, established by any proper government agency.** Supplier represents and warrants that the prices for the Products and Services are at least as favorable as the price, terms and conditions given to its other customers. If Supplier should offer a Product or Service to another customer at a more favorable price, term or condition, then Supplier shall refund or credit to Rimage any difference between the price offered to such third party and the price paid by Rimage, or this Order shall be amended to include the more favorable term

or condition as of the date such offer was made by Supplier. Rimage has the right to inspect Supplier's books and records to verify compliance with these Terms and Conditions.

- 18. Ownership.** Supplier acknowledges that Rimage shall own all right, title and interest, including all intellectual property rights, in and to all unique changes or alterations made to a Product to comply with Rimage's unique requirements or specifications or any materials developed by Supplier as part of any Services. Supplier agrees that all such materials, changes or alterations are "works made for hire" under applicable law and Supplier hereby assigns to Rimage any and all intellectual property rights in such materials, alterations and changes.
- 19. Termination.** Either party may terminate the Order if the other party fails to comply with its obligations under the Order and does not cure such breach within 30 days of receipt of notice regarding such breach. Without limiting its rights, Rimage may also notify Supplier of its intention to terminate the Order upon any of the following events: (a) at any time prior to the date of delivery specified in the Order; or (b) for convenience upon 30 days written notice to Supplier.
- 20. Limitation of Liability.** REGARDLESS OF WHETHER A CLAIM IS IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, AND EXCEPT FOR LIABILITY ARISING UNDER SECTION 13 OR FOR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY (A) INDIRECT, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES HEREUNDER, EVEN IF SUCH PARTY IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES; OR (B) LIABILITY IN EXCESS OF THE TOTAL AMOUNTS PAYABLE BY RIMAGE FOR THE PRODUCTS OR SERVICES SPECIFIED IN THE ORDER.
- 21. Governing Law.** The Order and these Terms and Conditions shall be governed by and construed in accordance with the law of the state of Minnesota, without reference to conflicts of law principles. Venue for any proceeding arising from or related to the transactions contemplated in the Order shall be in the federal or state courts located in the state of Minnesota and the parties hereby consent to the exclusive personal jurisdiction of such courts. The United Nations Convention for the International Sale of Goods shall not apply to the transactions contemplated in the Order.
- 22. Assignment/Subcontracting.** No part of the Order may be assigned or subcontracted, directly or indirectly, without Rimage's prior written approval. Rimage shall have the right, exercisable in Rimage's sole discretion, to immediately terminate the Order upon Supplier's merger with another company, acquisition of Supplier by another company, or a sale of substantially all of Supplier's assets to another company. Rimage reserves the right to assign all or any part of the Order to its parent, subsidiaries, affiliates or any successor in interest to all or any part of Rimage's operations. Any attempt by Supplier to assign any rights, duties or obligations hereunder without Rimage's prior written consent will be void.
- 23. Severability; Remedies Cumulative.** If a court of competent jurisdiction finds any of the provisions contained herein to be invalid, illegal or unenforceable in any respect, such provision shall be construed as closely as possible to the original intent of such provision, and the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. All rights and remedies available under the Order or applicable law will be cumulative and may be exercised singularly or concurrently. No waiver of any rights of the Order or these Terms and Conditions shall be construed as a waiver of any other rights.

- 24. Independent Contractor.** In all matters relating to the Order, each party is an independent contractor and the parties shall not have the authority to bind, represent or commit the other. Nothing in these Terms and Conditions shall be deemed or construed to create a joint venture, partnership or agency relationship between the parties for any purpose. In addition, neither party shall be deemed a joint employer of the other's employees. Neither party's employees shall be deemed "leased" employees of the other. Each party shall be solely responsible for the supervision of its employees and for the fulfillment of all obligations incumbent upon an employer with regard to its employees, including the withholding and payment of income taxes, statutory benefits, and social security taxes, and the provision of health, disability and other benefits or workers' compensation insurance.
- 25. Setoff.** Rimage may set off any amount due from Supplier, whether or not under any Order, against any amount Rimage owes Supplier. Rimage may withhold from payment to Supplier an amount sufficient to reimburse Rimage for any loss, damage, expense, cost or liability from Supplier's failure to comply with any Order.
- 26. Survival.** All Terms and Conditions that, by their nature would survive the expiration or termination of the Order shall so survive.
- 27. Affirmative Action.** This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

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