

Agile Technology Architects, LLC

Achieving Business Results from the Edge of Chaos

Terms & Conditions of Sale, Professional Services



A. Order Initiation Terms

1. **Applicability.** Each quotation and/or AGILE TECHNOLOGY ARCHITECTS, LLC statement of work together with these Term and Conditions ("Offer") is an offer by AGILE TECHNOLOGY ARCHITECTS, LLC. ("AGILE") to the party to whom such Offer is addressed ("CUSTOMER") to sell to CUSTOMER the goods, software and Services Sold by Part Number (together "Products") and the professional services performed by AGILE or that are under AGILE's direct supervision ("Services") as identified in the Offer and otherwise to enter into the agreement that the offer describes. The term "Services Sold by Part Number", unlike AGILE professional services (see the defined term "Services" above), refer to all other services, which, although they may be ordered from AGILE, are to be supplied by a vendor (i.e., AGILE does not directly perform or control the work). A contract (the "Agreement") is formed when CUSTOMER accepts the Offer of AGILE.

2. **Acceptance.** Each Offer shall be deemed accepted upon the terms and conditions of such Offer by CUSTOMER, or CUSTOMER's third party leasing company, by written acknowledgement or by the issuance to AGILE of a purchase order or other acceptance document. Acceptance is expressly limited to these terms and conditions. No purported acceptance of any Offer on terms and conditions which modify, supersede, supplement or otherwise alter these terms and conditions, whether contained in CUSTOMER's purchase order or other acceptance document, shall be binding upon AGILE and such terms and conditions shall be deemed rejected and replaced by these terms and conditions unless CUSTOMER's proffered terms or conditions are accepted in a physically signed writing by AGILE Legal Services. Notwithstanding any contrary provision in CUSTOMER's purchase order or other acceptance document, delivery of Products or commencement of work by AGILE shall not constitute acceptance of CUSTOMER's terms and conditions.

B. Additional Terms for Service Sales

3. **Limited Warranty and Acceptance of Services.** The Services will be performed by AGILE in a manner consistent with good practice in the computer services industry. All Service deliverables will be deemed accepted by CUSTOMER if not rejected in a reasonably detailed writing within fifteen (15) days of submission to CUSTOMER. In the event the Services are not in conformance with this warranty and are rejected as specified above, AGILE will supply commercially reasonable services to correct or replace the work at no charge to the CUSTOMER. THIS IS CUSTOMER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY relating to Services.

4. **Limited Warranty for Staffing.** AGILE warrants that any consultant provided to CUSTOMER will have the qualifications and hold the certifications represented to CUSTOMER by AGILE. AGILE makes no other representations or warranties with respect to the services to be provided and makes no representation or warranty that services provided by a consultant will not interrupt CUSTOMER's operations.

5. **Service Warranty Disclaimer.** AGILE MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE Services (other than the limited and exclusive warranty provided for Services under Section 3). AGILE DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE Services, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Intellectual Property for Service Sales.

(a) Upon payment in full for all charges under this Agreement, AGILE will grant CUSTOMER such rights, title, and interest it may own to the software and documentation developed by AGILE specifically for CUSTOMER under this Agreement subject to the following limitation. AGILE retains a world-wide, unlimited, perpetual and royalty free right to (i) copy and use the software and documentation internally for any purpose; (ii) copy and distribute to third parties software which performs a general utility function; and (iii) use for any purpose any concepts, ideas, or techniques resulting from the development of the software and documentation by AGILE.

(b) AGILE retains all right, title, and interest in the software and documentation that is an enhancement to or modification of existing software or documentation owned or distributed by AGILE and grants to CUSTOMER a nonexclusive, nontransferable, royalty-free license to use the software and documentation on all of the CUSTOMER's computer systems.

(c) Any AGILE software, equipment or consulting, programming, or management tools which may be furnished or utilized by AGILE in the performance of these services shall remain the property of AGILE and shall be immediately returned to AGILE upon its request or upon completion of the Services.

7. **Service Work Assignments.** AGILE retains the right to assign such personnel, including subcontractors, as it deems appropriate to the performance of Services under the Agreement.

8. **CUSTOMER Coordination for Service Sales.** CUSTOMER will provide a primary point of contact and make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by AGILE. AGILE will assign a primary contact person for the Services.

C. Terms Applicable to All Sales

9. **Price and Payment.** The prices in this Agreement are exclusive of all applicable taxes, duties, licenses, and tariffs levied upon the sale, purchase or delivery of the Products and Services which remain the CUSTOMER's obligation. Prices quoted are firm for thirty (30) days (with the exception of AGILE' retention of a right to reasonably adjust price if the Product manufacturer/distributor increases or decreases its price to AGILE following the quote) unless otherwise provided on the Offer. Except for COD accounts that are due on delivery, payment is due ten (10) business days from the date of the invoice whether paid directly by CUSTOMER or by a third party leasing company. In the event CUSTOMER chooses to

lease the Products from a third party leasing company, CUSTOMER remains liable for payment to AGILE for all Products purchased until AGILE receives payment from such leasing company. Where the order includes Products and Services, the Agreement shall be deemed to be a separate transaction for the supply of Products and the supply of Services. Any default or delay by AGILE in the supply of Products shall not relieve the Customer of its obligation to take and pay for Services and any default or delay by AGILE in the supply of Services shall not relieve the Customer of its obligation to take and pay for Products. All payments will be made in US currency. Out of pocket expenses will be charged as incurred. Unless expressly provided to the contrary, items designated by AGILE as estimates are estimates only and are not binding commitments. CUSTOMER will pay interest in the amount of one and seven tenths percent (1.7%) per month, or the maximum allowed by law whichever is lower, on any outstanding balance owed.

10. **Confidential Information.** Written and oral information designated as confidential by either party whether before or after the effective date of this Agreement shall be held in strict confidence and used only for purposes of this Agreement. Except as required by law, no confidential information, including the provisions of this Agreement, shall be disclosed without the prior written consent of the party designating the information as confidential. If either party is required to disclose any confidential information of the other party, the party so required shall notify the other party immediately and shall cooperate in seeking a reasonable protective order. This section shall not apply to information, which is (i) in the public domain, (ii) already known to the recipient, (iii) developed independently or (iv) received from a third party without similar restriction and without breach of this or a similar agreement.

11. **Export.** CUSTOMER acknowledges that it is responsible for complying with (and agrees to comply with) all applicable export and re-export control laws and regulations, including, without limitation, the Export Administration Regulations maintained by the United States Department of Commerce. Specifically, CUSTOMER covenants that it shall not -- directly or indirectly -- sell, export (including without limitation any deemed export as defined by applicable law), re-export, transfer, divert, or otherwise dispose of any Product or Service deliverable to any country (or national thereof) subject to antiterrorism controls, U.S. embargo, encryption technology controls, or to any other person, entity (or utilize any such person or entity in connection with the activities listed above), or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. CUSTOMER certifies, represents and warrants that no Product or Service shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. **Notwithstanding any provision of IT services or designs by AGILE, CUSTOMER acknowledges that it is not relying on AGILE for any advice or counseling on such export control requirements.** CUSTOMER agrees to indemnify, to the fullest extent permitted by law, AGILE from and against any fines, penalties and reasonable attorney fees that may arise as a result of CUSTOMER's breach of this Section.

12. **Limitation of Liability. NO MONETARY RECOVERY IS AVAILABLE FROM AGILE FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL AGILE' LIABILITY TO CUSTOMER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE THAT IS THE BASIS FOR THE PARTICULAR CLAIM. FOR REMOTE MANAGEMENT OF CUSTOMER'S ENVIRONMENT (MANAGED SERVICES) AND/OR AGILE ENTERPRISE CLOUD SERVICES, THE TOTAL LIABILITY OF AGILE FOR THE PERFORMANCE OR NONPERFORMANCE OF ITS OBLIGATIONS SHALL NOT EXCEED SIX MONTH'S BASE CHARGE FOR THE SERVICE(S) THAT IS THE BASIS FOR THE PARTICULAR CLAIM. AGILE WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY LOSS OF REVENUE, PROFIT, USE OF DATA, INTERRUPTION OF BUSINESS OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR SERVICE, OR IN ANY WAY CONNECTED TO THIS AGREEMENT, EVEN IF AGILE HAS BEEN ADVISED OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.**

13. **Cancellation of Order.** This Agreement may be cancelled by CUSTOMER only upon written approval of AGILE and upon terms that indemnify AGILE against all losses related to such Agreement.

14. **Additional Contractual Rights for Default.** If CUSTOMER defaults in performance of any obligation under this Agreement, including the payment of any amount due, AGILE may, at its option, suspend performance, require prepayment, or terminate its performance and collect payment for all Products and Services provided up to the date of termination.

15. **Attorney Fees.** CUSTOMER shall reimburse AGILE for any and all expenses including, without limitation, reasonable attorney fees and legal expenses that AGILE pays or incurs in protecting and enforcing the rights of AGILE under this Agreement.

16. **Publication.** Nothing contained in this Agreement shall be interpreted so as to prevent AGILE from publicizing its business relationship with CUSTOMER or the nature of the Products/Services performed for CUSTOMER.

17. **No Solicitation.** CUSTOMER agrees not to solicit for employment or to employ any AGILE employee or for a period of twelve (12) months following the conclusion of the work performed under this Agreement without expressed written approval of AGILE.

18. **Indemnification.** CUSTOMER agrees to defend, at its expense, and to indemnify AGILE against any award of damages and costs based on the claim that any materials or documentation provided by CUSTOMER to AGILE during this engagement infringes a U.S. patent, copyright or other intellectual property right of any third party.

19. **Governing Law.** These Terms and Conditions will be construed in accordance with the laws of the State of Wisconsin.

20. **No Waiver.** The failure of either party to insist upon strict performance of any of the provisions of the Terms and Conditions will not be deemed a waiver of any breach or default. The remedies provided to AGILE hereunder are not a waiver of the remedies of AGILE under applicable law.

21. **Severability.** If any provision of the Agreement is unenforceable as a matter of law, all other provisions will remain in effect.

22. **Excusable Delay.** AGILE will not be liable for any delay or failure of performance whatsoever due to acts of God, earthquakes, shortage of supplies, transportation difficulties, labor disputes, riots, war, fire, epidemics or other circumstances beyond AGILE' control.

23. **Time for Bringing Claims.** Any claim by CUSTOMER against AGILE arising from or in connection with the Agreement or any related purchase order cannot be filed, made or maintained unless filed within three months after AGILE has shipped or provided the Products or Services in question.

24. **Entire Agreement.** These terms and conditions along with the Offer constitute the entire agreement between the parties as to the sale of Products and/or Services