



DIAMANTI

HARDWARE TERMS OF SALE

These Hardware Terms of Sale (this "**Agreement**" or these "**Terms**") are a legally binding contract between you ("**Customer**") and Diamanti, Inc. ("**Diamanti**") concerning the Diamanti system or other Diamanti hardware product ("**Hardware**") identified a sales transaction document, including: (i) the Diamanti invoice provided to you ("**Invoice**"); (ii) the Diamanti quote provided to you ("**Quote**"); (iii) Customer's purchase order or other written ordering document provided to, and expressly accepted by Diamanti ("**PO**"); or other written ordering, purchase, sales and/or fulfillment agreement by and between Customer and Diamanti (any of the foregoing sales transaction documents, collectively, "**Sales Agreement**"). Carefully read all of these Terms. If you do not agree to these Terms, you are not permitted to keep the Hardware and you must promptly return it to Diamanti. By ordering the Hardware, or by keeping any Hardware for evaluation past any Loan Period (if applicable) as defined and specified in an evaluation, loan or other trial agreement or addendum executed by the parties ("**Evaluation Loan Agreement**"), you agree to be bound by these Terms.

Your license to use the software installed on the Hardware is governed by the Diamanti End User License Agreement ("**EULA**") which can be found at <https://diamanti.com/legal/eula/>, provided separately.

1. DEFINITIONS

1.1 "Defect" means a confirmed failure of the Hardware to perform in accordance with the Documentation. A "**Major Defect**" is a Defect that, if not corrected, substantially deprives the Customer of the functionality of the Hardware.

1.2 "Documentation" means all written or electronic technical specifications or materials provided by Diamanti for use in connection with the Hardware.

1.3 "Customer" means you, the Customer of the Hardware or Documentation, pursuant to a Sales Agreement or Evaluation Loan Agreement.

2. ENTIRE AGREEMENT

Customer's purchase of the Hardware, or use of the Hardware in connection with any Evaluation Loan Agreement, will be governed by these Terms (together with the terms of any Evaluation Loan Agreement) to the exclusion of all other terms and conditions (including any terms or conditions that Customer purports to apply under any PO, confirmation of order, specification or other document), all of which are expressly rejected by Diamanti. Any variation to these Terms and any representations about the Hardware shall have no effect unless expressly agreed in writing between authorized representatives of the Customer and Diamanti.

3. PAYMENT AND RISK OF LOSS

3.1 Payment of the price for the Hardware is due in US dollars, in the amount as Diamanti may specify thirty (30) days after the date of invoice.

3.2 Unless otherwise specified in writing, all Hardware is sold within the continental United States F.O.B. Diamanti's location. Upon due tender of the goods for delivery at the F.O.B. point, all risks of loss or damage pass to Customer, regardless of the terms of payment or form of bill of lading, or the mode of shipment, or who pays the actual transportation charges. For international shipments, all Hardware is sold Ex Works Diamanti's location (as defined by INCOTERMS 2000).

3.3 Customer is responsible for payment of any local, state, federal, use, excise, personal property or similar taxes, duties or shipping charges.



4. WARRANTY AND LIABILITY

4.1 Diamanti shall defend Customer against any claim that the Hardware or Documentation infringes a United States patent, copyright, or trade secret, and shall pay any settlements entered into or damages awarded against Customer to the extent based on such a claim, provided that (a) Customer notifies Diamanti promptly in writing of the claim; (b) Diamanti has sole control of the defense and all related settlement negotiations; and (c) Customer provides Diamanti with all necessary assistance, information, and authority to perform the above.

4.2 Diamanti shall have no liability for any claim of infringement based on (a) modification of the Hardware by Customer if the infringement would have been avoided without such modification; or (b) the combination or use of the Hardware with software or hardware not furnished by Diamanti if the infringement would have been avoided by use of the Hardware without that software or hardware.

4.3 In the event the Hardware is held to, or Diamanti believes it is likely to be held to, infringe a United States patent, copyright or trade secret, Diamanti shall have the right at its sole option and expense to (a) substitute or modify the Hardware so that it is non-infringing; (b) obtain for Customer a license to continue using the Hardware; or (c) if (a) and (b) are not reasonably practicable, terminate this Agreement.

4.4 The foregoing states Diamanti's sole obligation and exclusive liability (express, implied, statutory, or otherwise) for any infringements or claims of infringement of any patent, copyright, trademark, trade secret, or other intellectual property right.

4.5 Diamanti's limited warranty for the Hardware is as set forth in the Diamanti Express Limited Warranty, which can be found at <https://diamanti.com/legal/express-limited-warranty/>. This warranty does not apply to any software installed on the Hardware. Please see the EULA for software warranty terms. Diamanti does not warrant that the Hardware will be error-free or will operate without interruption. Diamanti does not warrant that the Hardware will meet Customer's requirements or will operate in combination with other software. If the warranty set forth in this Section is breached, Diamanti's sole obligation will be to repair or replace the Hardware, at Diamanti's sole discretion. Diamanti, however, does not warrant that all Defects can be corrected. Customer shall not be entitled to assert any claim for breach of the limited warranty stated in this Section unless the claim is made in writing and delivered to Diamanti within two years after the Delivery Date of the Hardware. Diamanti has no obligation to repair any Defect that results from accident, abuse or misapplication. For purposes of these Terms, the "Delivery Date" shall mean the date upon which Diamanti or its authorized distributor or reseller ships the Hardware to the Customer in accordance with the packing slip date.

4.6 Diamanti will not accept returns without a Return Material Authorization by Diamanti ("**RMA**") issued pursuant to the Diamanti RMA Policy, which can be found at <https://diamanti.com/legal/rma-policy/>. If Customer seeks repair or replacement pursuant to the warranty in Section 4.5 it should contact Diamanti for an RMA, as set forth in the RMA Policy.

4.7 DIAMANTI HEREBY DISCLAIMS ALL OTHER WARRANTIES TO CUSTOMER, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE HARDWARE OR DOCUMENTATION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS WHICH VARY FROM STATE TO STATE.

4.8 THE EXPRESS LIMITED WARRANTY AND REMEDY STATED ABOVE IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF DIAMANTI FOR DAMAGES WHATSOEVER INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF OR INABILITY TO USE THE HARDWARE, EVEN IF DIAMANTI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

4.9 IN NO EVENT WILL DIAMANTI BE LIABLE TO CUSTOMER FOR DAMAGES OR ANY OTHER AMOUNTS THAT EXCEED THE LESSER OF TOTAL OF THE AMOUNTS PAID TO DIAMANTI BY CUSTOMER PURSUANT



TO THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE ON WHICH DIAMANTI RECEIVED NOTICE OF THE BASIS FOR THE AWARD OR \$1,000,000 USD.

4.10 All warranties stated in this Agreement are immediately void if Customer or any third party makes any changes to the Hardware. Diamanti shall have no obligation to test, debug, repair or certify any Hardware that has been modified by Customer or any third party.

4.11 No Diamanti employee, agent or representative has the authority to bind Diamanti to any oral representations or warranties concerning the Hardware or Documentation.

5. CUSTOMER INDEMNITY

Except for infringement and warranty claims for which Diamanti is liable under Section 4, Customer agrees to indemnify and hold Diamanti, its directors and/or its management harmless against any cost, loss, liability or expense (including attorneys' fees) arising out of third-party claims against Diamanti relating to Customer's use of the Hardware, including, without limitation, any claim that the use of the Hardware in connection with any other software or hardware infringes any copyright, patent, trade secret or other right of any other person or entity.

6. USE PURSUANT TO EVALUATION LOAN AGREEMENT

If the Hardware is shipped to Customer pursuant to an Evaluation Loan Agreement, the following Terms apply and supersede any other of these Terms to the contrary:

6.1 Diamanti retains title to the Hardware until such time as the Loan Period defined and specified in the Evaluation Loan Agreement passes and Customer pays the invoiced price for the Hardware pursuant to a Sales Agreement ("**Time of Purchase**"). Customer bears the risk of loss from delivery of the Hardware to the carrier.

6.2 The Hardware may be used only for the use defined and specified in the Evaluation Loan Agreement. Without limitation of the foregoing, the Hardware may not be used in production or to provide service to any third party.

6.3 Diamanti makes no warranty of any kind until the Time of Purchase, at which point the warranties specified herein and in the Diamanti Express Limited Warranty will become effective.

6.4 The disclaimers of warranty and limitations of liability set forth in Sections 4.7, 4.8, and 4.9, and the indemnity set forth in Section 5, apply at all times after the shipment of the Hardware to Customer.

7. GENERAL

7.1 Assignment. Customer may not assign this Agreement or any of its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of Diamanti. This Agreement shall bind each party and its permitted successors and assigns. Any assignment in contravention of this Section shall be null and void and of no force or effect.

7.2 Disputes. This Agreement shall be governed by and construed in accordance with the laws of California. The UN Convention on Contracts for the International Sale of Goods shall not apply. This Agreement is the entire agreement of the parties and supersedes all prior or contemporaneous agreements, communications or representations, written or oral, between the parties with respect to the subject matter of this Agreement and represents the complete integration of the parties' agreement. Any different or additional terms of any related purchase order, confirmation, quote or similar ordering document, even if signed by the parties after the date hereof, shall have no force or effect on this Agreement. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall not be affected or impaired. This Agreement may be modified only by a written agreement executed by authorized officers of each party. No delay or omission to exercise any right or remedy accruing to a party upon any breach or default of the other party shall impair that right or remedy, or be construed to be a waiver of any breach or default.

7.3 Force Majeure. Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including without limitation acts of God, labor disputes, shortages of supplies, fire, war, disruption related to terrorism, epidemics,



pandemics or delays of common carriers. The obligations and rights of the excused party shall be extended on a day to day basis for the time period equal to the period of the excusable delay.

7.4 Export Compliance. Customer acknowledges that Diamanti is subject to regulation by agencies of the U.S. government which prohibit export or diversion of certain technical products to certain countries. Customer warrants that it will comply in all respects with the export and re-export restrictions applicable to the Hardware.