

# TERMS AND CONDITIONS OF SALE (US AND CANADA): GBS NORTH AMERICA; L.L.C.

These Terms and Conditions of Sale, together with an identification of the specific Goods, quantities, and other particulars with respect to the Goods being sold hereunder provided by Seller, constitute the entire agreement for the sale of the Goods (“**Agreement**”). As used in these Terms and Conditions of Sale, “**Customer**” (or “**you**”) means the entity purchasing Goods pursuant to this Agreement; “**Goods**” means the goods or materials to be supplied by Seller to Customer through an Order placed under this Agreement; “**Order**” means an order placed by the Customer for the supply of Goods by Seller under this Agreement, and “**Seller**” (or “**we**” or “**us**”) means GBS North America, L.L.C.

THE TERMS AND CONDITIONS OF SALE OF GRUNDIG BUSINESS SYSTEMS PRODUCTS ARE LIMITED TO THOSE CONTAINED HEREIN, EXCEPTING ONLY CUSTOM GOODS SOLD UNDER A SEPARATE WRITTEN AGREEMENT SIGNED BY GRUNDIG BUSINESS SYSTEMS. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY CUSTOMER FORMS PROVIDED TO GRUNDIG BUSINESS SYSTEMS ARE DEEMED TO BE MATERIAL ALTERATIONS TO THE AGREEMENT AND ARE REJECTED. NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

## 1. OFFER AND ACCEPTANCE

1.1 Seller’s marketing materials do not constitute binding offers or offers which may become binding by acceptance. A binding contract for the sale of Goods shall only be formed upon Seller’s acceptance of Customer’s Order, through Seller’s written confirmation or other communication of acceptance of the Order, or Seller’s actions indicating acceptance, such as by shipping the Goods. All Orders are subject to acceptance by Seller, in its discretion, at its office in Chicago, Illinois.

1.2 The terms and conditions which govern the sale of the Goods are limited to those set forth herein, which constitute the sole, entire and exclusive agreement between Customer and Seller for the Goods specified herein and which supersede all prior discussions, proposals, negotiations, representations and agreements. Seller objects to and will not be bound by any additional, different or inconsistent terms in Customer’s purchase order or other documents from Customer, and shipment pursuant to a purchase order of Customer that contains additional, different or inconsistent terms does not constitute acceptance of such terms. No conditions, understandings or agreements purporting to waive, modify or vary the terms hereof will be binding unless made in writing and signed by an authorized representative of each party.

1.3 These terms and conditions are the only terms upon which we sell the Goods, and apply to the Customer’s initial Order hereunder and to all future Orders.

## 2. PRICE

2.1 The prices valid at the date Seller accepts Customer’s Order shall apply. Seller may revise its prices from time to time. Unless otherwise agreed, all Orders will be priced in accordance with Seller’s standard price quotation in effect on the date of shipment.

2.2 The price includes simple packaging only, for delivery to shipper at Seller’s warehouse dock. Costs of shipment, special handling or packaging, or other services are not included in quoted prices, and will be charged to Customer if paid by Seller and if not otherwise agreed in writing.

2.3 Prices do not include any tax, duty or other governmental charge (“**Tax**”) upon the sale and/or shipment of the Goods. Any Tax required to be collected by Seller will be added to the price of the Goods and will be paid by Customer. If Customer claims it is entitled to exemption from withholding of sales or other Taxes, Customer may provide all necessary documentation thereof, and agrees to indemnify Seller against any charges imposed on Seller as a consequence thereof.

## 3. DELIVERY AND INSTALLATION

3.1 Delivery dates are estimates and non-binding. Seller shall not be liable for any delay, damage, loss or expense incurred by the Customer whether arising directly or indirectly out of any failure of Seller to meet estimated delivery dates.

3.2 Seller shall have the right to deliver Goods in installments, unless the Customer has notified Seller in writing ten (10) days prior to the notified estimated delivery date that it does not wish to receive delivery by installments.

3.3 Transportation of the Goods shall be at the Customer’s risk. Title and risk of loss with respect to the Goods covered hereby will pass to Customer, and Customer will become the sole owner (subject to Seller’s retained security interest in the Goods) and take possession of the Goods, when the same are loaded into trucks or other conveyances at Seller’s shipping point, unless otherwise specified by Seller. Unless Seller specifically agrees herein to pay all or some part thereof, Customer will pay the freight or other delivery charges, inspection fees, if any, freight or cargo insurance, and all other charges levied or imposed on the Goods after loading. If the Seller prepays such charges on Customer’s request or for Customer, Customer will reimburse Seller for all such charges.

3.4 We recommend that the Goods be installed by trained specialist staff

## 4. PAYMENT TERMS

4.1 As a general rule, seller requires payment in advance.

4.2 As an exception, Seller may agree in writing to payment after date of invoice. In such cases:

- (i) Invoices will be due immediately and payable without any discount or deduction by way of set-off or counter-claim thirty (30) days after the invoice date.
- (ii) Customer will pay a finance charge of 1.5% per month or the maximum rate allowed by law, whichever is less, on any past due amounts.

4.3 If at any time, in Seller’s opinion, the financial responsibility of Customer becomes impaired or unsatisfactory to Seller, or inadequate to meet the obligations hereunder, the terms of payment may, at Seller’s option, be revised or withdrawn, and Seller may require prepayment in cash, a guaranty or letter of credit as performance assurance, or other security satisfactory to Seller before making further shipments to Customer. In addition to any other legal remedy, if Customer fails to fulfill the terms of payment or is in default with respect to any of the other terms and conditions hereunder, Seller may defer further delivery of Goods hereunder or may, at its option, cancel all further deliveries of Goods to Customer. Customer agrees to pay all costs and expenses, including reasonable attorneys’ fees, incurred by Seller in the collection of any sum payable by Customer to Seller.

4.4 To secure the full and timely payment and performance of all obligations of and indebtedness of Customer to Seller arising under the Agreement (including all deliveries of Goods, whether under one or more Orders), Customer hereby grants to and creates in favor of Seller a security interest in the Goods and Customer authorizes Seller to file, on one or more occasions, one or more financing statements or other documents evidencing Seller’s security interest granted by Customer and describing the Goods or other materials which may be pledged to Seller as collateral hereunder or hereafter. Upon Seller’s request, Customer will segregate Seller’s Goods and identify that the Goods are subject to Seller’s security interest. Seller shall not be obligated to release its security interest in the collateral until all of Customer’s payment obligations to Seller under this Agreement and any other agreement are satisfied in full.

## 5. LIMITED WARRANTY

5.1 Seller warrants that it will convey good title to the Goods sold by it. Seller further warrants that the Goods will be free from defects in material and workmanship which are not commercially acceptable for one year from the date of shipment. NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH ABOVE (WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES), SHALL APPLY TO THE GOODS. NO WAIVER, ALTERATION OR MODIFICATION OF THE FOREGOING SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY AN EXECUTIVE OFFICER OF SELLER. In the event that (i) the Goods do not meet the above limited warranty, (ii) delivery of the Goods is delayed by Seller, or (iii) Seller fails to perform any obligation with respect to an Order for Goods accepted by it or other obligations arising under this Agreement, then Customer’s sole and exclusive remedy against Seller will be to have Seller repair or replace the Goods, at the sole and exclusive option of Seller. In no event shall Seller be liable for consequential, special or contingent damages which may, or allegedly may, result from use of any of the Goods.

5.2 We continually update and revise our products. We may revise and/or discontinue certain Goods and we reserve the right to make technical and/or design changes to the Goods at any time. Changes between what is shipped and what is described in marketing materials (ads, catalogs, specification sheets, etc.) are possible. Any implied warranty to the contrary is hereby disclaimed.

5.3 Any technical advice given by Seller in reference to the use of its products (including the Goods), whether given verbally or in writing or by means of Seller’s marketing materials or technical publications (unless given pursuant to a written agreement regarding consulting or other services) is given without any warranty whatsoever as to advice given or results obtained.

5.4 Seller undertakes no separate warranty obligations directly to end users of the Goods (“**Consumers**”). Customer is not authorized to make any representations or warranties on our behalf, and agrees to indemnify Seller against any claims of Consumers to the extent based on Customer’s representations. Customer further indemnifies Seller against all claims of Consumers to the extent that liability is broader than provided in Section 5.1 above or exceeds the limitations of liability in Section 6 below.

## 6. LIMITATION OF LIABILITY

6.1 SELLER’S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, DEVELOPMENT, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT COVERED BY OR FURNISHED UNDER THIS AGREEMENT OR ANY SERVICES PROVIDED HEREUNDER, SHALL IN NO CASE EXCEED THE CONTRACT PRICE ALLOCABLE TO THE PRODUCT, OR PART THEREOF, OR SERVICE WHICH GIVES RISE TO THE CLAIM.

6.2 NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, PUNITIVE DAMAGES, LOSS OF PROFITS, WORK STOPPAGE, GOODWILL, LOSS OF REVENUES OR LOSS OF USE OF ANY PROPERTY OR CAPITAL OF BUYER, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SELLER IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER.

6.3 THESE EXCLUSIONS OF TYPES OF DAMAGES AND LIMITATIONS ON THE AMOUNT OF DAMAGES SET FORTH IN THIS AGREEMENT SHALL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. THESE EXCLUSIONS OF TYPES OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE, ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THIS AGREEMENT.

6.4 EXCEPT AS HEREIN EXPRESSLY PROVIDED TO THE CONTRARY, THE PROVISIONS OF THIS AGREEMENT ARE FOR THE BENEFIT OF THE PARTIES TO THIS AGREEMENT AND NOT FOR THE BENEFIT OF ANY OTHER PERSON.

## 7. TERMINATION

7.1 Seller shall, at its option, be entitled by notice to terminate this Agreement (and all Orders made under it) immediately and recover all expenses, losses and damage resulting to Seller including (but without limitation to) loss of profit or other consequential loss if Customer:

- (i) is unable to pay any amount due under this Agreement;
- (ii) becomes insolvent;
- (iii) is the subject of an order made or a resolution passed for its administration, winding-up or dissolution;
- (iv) makes an assignment for the benefit of creditors or files a voluntary petition in bankruptcy or files any petition or answer seeking for itself any arrangement, composition, adjustment, liquidation, dissolution or similar relief to which it may be entitled, or files any answer admitting the material allegations of any petition filed against it in any such proceedings, or seeks, consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of all or a substantial part of its properties or assets;
- (v) has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or
- (vi) is the subject of any events or circumstances analogous to the foregoing in any applicable jurisdiction.

## 8. Force Majeure

8.1 If Seller, or its suppliers, fails to perform any obligation under this Agreement due to any cause outside Seller’s (or such supplier’s) control including, but not limited to, shortages of labor, energy, fuel, machinery or materials, technical failures, war, riot, strike, lawful lockout, any government act, law or regulation including any judicial order or decree, natural disaster, fire flood, earthquake or terrorist act (each a “**Force Majeure Event**”), then Seller shall not be liable in any way for any loss, damage or expense arising directly or indirectly from such circumstance. Seller shall notify Customer of any Force Majeure Event affecting its performance as soon as possible.

8.2 If a Force Majeure Event subsists for a period of three (3) months or longer, either party may cancel an Order affected by such Force Majeure Event immediately by written notice to the other party.

## 9. CONFIDENTIALITY

Customer shall treat all information and documents received from Seller (other than marketing and promotional materials made available by Seller to the general public) as confidential and not disclose them to others except with Seller’s prior written consent.

## 10. ASSIGNMENT

Customer may not assign, transfer or sub-contract any benefit or burden to any other party that it has under this Agreement or under any Order entered into pursuant to this Agreement without Seller’s prior written consent.

## 11. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement shall be deemed to constitute a partnership between the parties, nor constitute either party the agent of the other party for any purposes.

## 12. GOVERNING LAW AND VENUE

This Agreement and an Order hereunder shall be governed by and construed and enforced in accordance with the laws of the State of Illinois. All actions or proceedings in any way, manner or respect, arising out of or from or related to this Agreement shall be submitted to state or federal courts located in DuPage County, Illinois. Each party hereby consents and submits to the jurisdiction of any local, state or federal court located within said state. The parties hereto waive any right they may have to transfer or change the venue of any litigation brought in accordance with this Section.

## 13. SEVERABILITY

In the event that any provision of this Agreement is found void or unenforceable, the provision shall nevertheless be construed so as to remain binding to the fullest extent possible and the remaining provisions of this Agreement shall be binding with the same effect as if the void or unenforceable provision or portion of a provision were deleted.

## 14. WAIVER

The failure of Seller to insist, in one or more instances, on performance by Customer in strict conformity with the terms and conditions of this Agreement shall not be deemed a waiver or relinquishment of any right granted hereunder or of the future performance of any term or condition of this Agreement. The remedies in this Agreement are cumulative and are not exclusive of any other remedies provided by law or in equity.

## 15. SURVIVAL OF PROVISIONS

Termination of this Agreement, for whatever reason, shall not affect any of its provisions which are intended to continue to have effect after it has come to an end, including any outstanding payment obligation of Customer.

## 16. RIGHTS OF THIRD PARTIES

This Agreement is not intended to confer any benefit on, and its terms shall not be enforceable by, any third party.

## 17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the parties and supersedes all prior understandings or arrangements (both oral and written) relating to the subject matter hereof.

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

Last amended: November 2009