

## **RIMAGE CORPORATION SALES TERMS AND CONDITIONS**

***1. By purchasing products from Rimage Corporation (“Rimage”), Buyer confirms that the following terms and conditions apply to Buyer’s purchase of Rimage’s products. Buyer agrees to be bound by and accept these terms and conditions unless Buyer and Rimage have signed a separate agreement, in which case the separate agreement will govern. Absent such separate agreement, no different, inconsistent, conflicting or additional terms or conditions Buyer may provide in the course of the sale from Rimage to Buyer or attempting to vary the pre-printed 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 Buyer has previously ordered Rimage’s product(s), Rimage accepts Buyer’s order only on the condition that Buyer agrees to all the terms and conditions set forth hereon that may be in addition or different from the terms and conditions of such previous order.***

**2. CONDITIONS OF SALE.** Any products Buyer purchases from Rimage by electronic, phone, paper or any other form of transmission are sold subject to the following:

a. If Buyer has a fully signed sales agreement currently in effect with Rimage, then any term in that agreement that conflicts with these terms and conditions will be applied to Buyer’s purchase; the rest of these terms and conditions will otherwise apply.

b. If Buyer does not have a fully signed sales agreement with Rimage, then Buyer agrees these Sales Terms and Conditions constitute the complete contract between Rimage and Buyer with regard to the products sold by Rimage to Buyer. Any changes to such contract must be in a writing signed by Rimage.

c. Unless otherwise expressly agreed in a governing sales agreement or other contract between Buyer and Rimage, in order to promote the safe and effective use of Rimage’s equipment, all equipment sold by Rimage is provided solely for use by the original purchaser of such equipment from Rimage, and any resale or similar transfer of such equipment without Rimage’s knowledge and consent is prohibited and shall constitute a material breach of the governing sales agreement.

### **3. PRICE AND TERMS.**

a. Product prices are determined by the signed sales agreement to which these Sales Terms and Conditions are attached or, in the absence of such sales agreement, by Rimage’s list prices current at the time of shipment.

b. Buyer is solely responsible for all taxes, fees and permits relating to the sale, use or installation of the products and upon notice (whether on a document to which this Sales Terms and Conditions document is attached or a future invoice) shall promptly reimburse Rimage therefore.

c. If Rimage pays freight or other charges Buyer has agreed to pay, explicitly or pursuant to these Sales Terms and Conditions, but fails to include such charges on the original invoice for

the products, including but not limited to the charges for the items listed in Section 3.b. above, Rimage shall invoice Buyer and Buyer shall promptly pay such charges. Rimage will work with Buyer to have the invoicing for such charges conform to Buyer's accounts payable system, but Buyer shall in any case be responsible for all such charges.

d. Typographic or other errors in stated prices are subject to correction.

e. Unless otherwise agreed, payment is due within 30 days of the invoice date. Amounts not paid when due may be subject to a late payment fee computed daily at the lesser of 1 ½ % per month or the maximum rate permitted under applicable law. Buyer also agrees to reimburse Rimage for Rimage's costs of collection should Buyer fail to pay Rimage in a timely manner. Late payments on maintenance contracts constitute a default of the contract and full payment will be required before any further service work can be performed.

f. If Buyer chooses to purchase products from Rimage by means of a Rimage provided electronic purchase and/or payment system, Rimage will use reasonable care to protect the confidentiality of Buyer's credit card or other financial information. Buyer is solely responsible for controlling the use or dissemination of any such information within its organization should an employee of Buyer obtain any such information because of authorized or unauthorized use of any Rimage provided electronic purchase and/or payment system.

#### **4. DELIVERY.**

a. Any delivery dates Rimage quotes are estimates. Rimage cannot guarantee delivery on a specific date.

i. The following terms apply to shipments to a destination within the United States:

A. Unless otherwise agreed, all title and risk of loss or damage passes to Buyer at the time products leave Rimage's facility. Unless otherwise agreed, products are shipped FOB Origin – Freight Collect and Buyer is responsible for all shipping costs, insurance and for filing any claims with the carrier.

B. If agreed, products may be shipped FOB Origin – Freight Prepaid. All title and risk of loss or damage become the responsibility of Buyer at the time products leave Rimage's facility. Freight charges will be added to Buyer's invoice for the products purchased. Buyer is responsible for all insurance and for filing any claims with the carrier.

ii. The following terms apply to shipments to a destination outside the United States:

A. Unless otherwise agreed, shipments move FCA – Rimage's facility (Incoterms 2010). The price invoiced or quoted by Rimage does not include

charges after the products leave Rimage's dock. All charges after the products leave Rimage's dock are to be paid by Buyer.

B. All title and risk of loss or damage passes to Buyer at the time Rimage makes the products available for pick up by Buyer or Buyer's carrier at Rimage's dock. Buyer is responsible for all shipping costs, insurance and for filing any claims with the carrier.

iii. Delivery schedules are estimates only and are based upon prompt receipt from Buyer and appropriate governmental authorities of all necessary information and documentation. Failure to deliver within the agreed schedule, for whatever reason, shall not entitle Buyer to terminate the sales agreement, cancel the order, or claim consequential, liquidated or other damages.

iv. In the event Rimage determines it cannot deliver the full amount ordered, Rimage may allocate production deliveries among its customers.

v. Rimage reserves the right to deliver product in partial shipments or installments.

vi. Buyer grants Rimage a purchase money security interest in goods Rimage sells Buyer and Buyer agrees that Rimage may take actions in Buyer's name to perfect that interest as Buyer's attorney-in-fact; if Buyer is located in a place which recognizes reservation of title, Buyer agrees that Rimage retains title to the goods to secure Buyer's payment for them (but not for the purpose of risk of loss, insurance, shipping costs or responsibility to file any claims with the carrier, which remain the responsibility of Buyer unless Rimage explicitly agrees to any such responsibility), and Buyer assigns to Rimage all proceeds from their sale or pledge.

b. Buyer acknowledges that it has a reasonable opportunity to inspect the products prior to accepting delivery thereof from the carrier and that it shall be deemed to have waived any nonconformities of the products which are discoverable at that time unless it notifies Rimage thereof prior to receiving the products from the carrier. Buyer further agrees that it shall be deemed to have waived any other nonconformities which are discoverable upon visual inspection if such nonconformities are not reported orally to Rimage within one (1) business day and confirmed in writing within three (3) business days after delivery by the carrier.

c. All non-defective returns authorized by Rimage, whether opened or unopened, will be assessed a 25% restocking fee with Buyer responsible for return shipping.

**5. LIMITED WARRANTY.** Products sold by Rimage to Buyer conform to the manufacturers' specifications as set forth in the applicable product documentation delivered to Buyer or on Rimage's website and are subject to the applicable Warranty enclosed with the equipment or on Rimage's website, which warranty Buyer agrees is available for inspection prior to consummation of the sale contemplated by the applicable sales agreement. Unless stated otherwise in the sales agreement, consumables are not warranted. **Buyer's sole and exclusive**

remedy for breach of warranty is limited at Rimage's option to: (a) repair of the defective product, (b) delivery of a replacement product to the point of original delivery, or (c) refund of the original purchase price. A claimant must follow Rimage's standard warranty procedures or the claim will be barred. **THE WARRANTY INCLUDED WITH THE PRODUCT OR ON RIMAGE'S WEBSITE CONSTITUTES RIMAGE'S EXCLUSIVE OBLIGATION AND RIMAGE MAKES NO OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT OR ANY SERVICE, ADVICE, OR CONSULTATION, IF ANY, FURNISHED TO PURCHASER BY RIMAGE OR ITS REPRESENTATIVES, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. THE REMEDIES SET FORTH IN THE WARRANTY INCLUDED WITH THE PRODUCT OR ON RIMAGE'S WEBSITE ARE THE ONLY REMEDIES AVAILABLE TO ANY PERSON OR ENTITY FOR BREACH OF WARRANTY OR FOR BREACH OF ANY OTHER COVENANT, DUTY, OR OBLIGATION ON THE PART OF RIMAGE. RIMAGE SHALL HAVE NO LIABILITY OR OBLIGATION TO ANY PERSON OR ENTITY FOR BREACH OF ANY OTHER COVENANT, DUTY OR OBLIGATION UNDER SAID WARRANTY EXCEPT AS EXPRESSLY SET FORTH HEREIN OR THEREIN. IT IS EXPRESSLY AGREED THAT THE WARRANTY INCLUDED WITH THE PRODUCT OR ON RIMAGE'S WEBSITE DOES NOT FAIL OF ITS ESSENTIAL PURPOSE.**

#### **6. LIMITATION OF CLAIMS.**

a. Rimage will not be responsible for any harm arising out of Buyer's purchase, possession or use of any products supplied by Rimage or any technical advice Rimage may offer, except as agreed in the Limited Warranty referred to above.

**b. RIMAGE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF PROCUREMENT OR INSTALLATION OF ANY SUBSTITUTE GOODS FOR THE PRODUCTS BUYER PURCHASED, CLAIMS OF ANY THIRD PARTIES, OR INJURY TO PERSONS OR PROPERTY, WHETHER ANY SUCH CLAIM BE BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE. IN NO EVENT SHALL RIMAGE'S TOTAL LIABILITY HEREUNDER EXCEED THE ORIGINAL PURCHASE PRICE OF THE RIMAGE PRODUCT WHICH GAVE RISE TO SUCH LIABILITY.**

c. Buyer understands that product performance during actual use will depend substantially on factors beyond Rimage's control, including, but not limited to, proper testing, installation and maintenance. Buyer shall undertake and complete product testing, installation and maintenance in accordance with procedures recommended by Rimage in the product's manual and applicable industry practices, and Buyer agrees to hold harmless, indemnify and defend Rimage from and against any claims, liability damages or expenses incurred by Rimage, including attorneys' fees and costs, as a result of Buyer's failure to follow such procedures.

**7. TECHNICAL ADVICE AND OTHER SERVICES.** Buyer agrees it has tested and investigated products sold by Rimage enough to form an independent judgment concerning their suitability for the use intended by Buyer and will not make any claim against Rimage based on Rimage's technical advice, statements, data, services or recommendations.

**8. PATENTS.** Any suggestions Rimage makes about possible uses of Rimage's products do not give Buyer a license under any patent covering such uses, nor are they a recommendation for use of such products, articles or designs which may infringe any patent. Rimage will defend Buyer if there is a claim that Rimage's products, as Rimage delivers them to Buyer, infringe another person's patents, and if necessary will either refund the purchase price or obtain for Buyer a license under those patents.

**9. EVENTS BEYOND RIMAGE'S CONTROL.** Rimage will not be responsible if Rimage cannot perform under this agreement if events beyond Rimage's control occur which make it impossible or commercially unreasonable for Rimage to perform, including so-called "Acts of God" or "force majeure" events and raw material shortages.

**10. ENVIRONMENTAL COMPLIANCE.** If required by applicable law, Rimage will give Buyer Material Safety Data Sheets ("MSDSs") and Buyer will provide the MSDSs to all those required by law to receive them. Buyer will take such precautions as may be appropriate for hazards identified in the MSDSs and properly manage and dispose of all wastes and residues resulting from Buyer's use of the materials in accordance with applicable international, federal, state and local laws and regulations. Buyer agrees to dispose of any waste products and disposable packaging as required by any and all applicable disposal or recycling laws.

**11. EXPORT CONTROL COMPLIANCE.** Buyer ensures that products, technology or software Buyer receives from Rimage are exported by Buyer only in compliance with applicable laws, including U.S. export control laws. Buyer certifies that it will not use or knowingly support the use by others of such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons or ballistic missiles.

**12. TERMINATION FOR DEFAULT.** Rimage may terminate any sales agreement upon thirty (30) days' prior written notice in the event Buyer breaches any material term thereof or files bankruptcy; provided, however that during such notice period, Buyer may cure its default and thereby abate the termination; provided, further, that if such default shall require a longer period to remedy, so long as Buyer has taken reasonable steps within such period to commence the curing of the default, the termination shall be abated as long as such steps continue to be taken. If Buyer is in default hereunder or files bankruptcy, Rimage may suspend service and shipments of equipment or supplies without liability to Buyer.

**13. GOVERNING LAW.** This transaction 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 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.

**14. 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.**