

# Geist™ Terms and Conditions



These Terms and Conditions of Sale (“Terms”) for quotations, purchase orders, payments, invoices, and contracts stipulated by Geist, a division of Vertiv, and Geist Europe Ltd., and Geist (Shenzhen) Trading Limited Company. (hereinafter referred to as “the Seller”), purchasing goods and/or services and/or licensing software and/or firmware which are preloaded or to be used with goods (“Goods”) are included therein and acceptance thereof is deemed to be an acceptance of such Terms by the Purchaser (hereinafter referred to as the “Customer”). These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller’s scope or statement of work, or invoice from Seller relevant to the sale of the Goods by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement governing the sale of Goods by Seller to Customer. Seller’s acceptance of Customer’s purchase order is expressly conditional on Customer’s assent to all of Seller’s terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Customer’s purchase order. Customer’s acceptance of the Goods will manifest Customer’s assent to these Terms and Conditions. Seller reserves the right in its sole discretion to refuse orders. Any variation or modification to these Terms must be agreed to by the Seller in writing.

- 1. Quotations.** Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods shall remain in effect for thirty (30) days after the date of Seller’s quotation provided an unconditional authorization from Customer for the shipment of the Goods is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods to Seller’s price for the Goods at the time of shipment. Quotations do not constitute an offer by the Seller to supply goods or supplies or to carry out work referred to therein, and no Purchase Order placed in response to a quotation will be binding unless accepted by the Seller in writing; all such acceptances will be subject to the availability of materials. The Seller reserves the right to make additional charges for any amendments to the quantity specified in the quotation, and for any alteration, additions or any other work undertaken at the request of the Customer. Seller reserves the right to correct any obvious errors in specifications or prices.
- 2. Orders.** All purchase orders must be made by the Customer by way of written Purchase Order (“Order”) – mailed, faxed, emailed, generated via online web merchant system, or sent via secure online quote builder to Seller. All Orders will be acknowledged by Seller within 48 hours of receipt. If the Customer does not receive confirmation of an Order from Seller, the Order was not received by the Seller. No terms or conditions set forth in said Order shall be binding upon the Seller or supersede the terms set forth here within. The Seller shall not provide any services, fabricate or assemble any supplies, procure required materials, nor ship any products, except to the extent specifically authorized by the Customer’s Order. The Customer shall be obligated only to purchase supplies and those product and materials fabricated or acquired by the Seller in reliance on an Order that established a firm or fixed quantity. Forecasts and planning advisories may not be relied upon by the Seller to acquire necessary materials. The Customer warrants that the price in an Order shall be complete and accurate and as the Seller has stipulated.
- 3. Delivery Dates.** Delivery dates given by the Seller are approximate only and no liability can be accepted for any loss, consequential loss, injury, damage, or expenses incurred consequent upon any delay in delivery from any cause whatsoever, nor shall any such delay entitle the Customer to cancel any Order or to refuse to accept delivery. Seller will use commercially available services to deliver products at the times specified in the Order. Seller, at its option, shall not be bound to tender delivery of any Goods for which Customer has not provided shipping instructions and other required information.
- 4. Excuse of Performance.** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Customer; war; viral outbreaks, disease, pandemic, widespread sickness or epidemic; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; or unforeseen circumstances, acts or omissions of Customer, or any events or causes beyond Seller’s reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Customer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.
- 5. Shipping.** For sales in which the end destination of the Goods is outside of the United States (except for those international sales to Seller’s affiliated companies), risk of loss and legal title to the Goods shall transfer to Customer immediately after the Goods have passed beyond the territorial limits of the United States. For international sales to Seller’s affiliated companies, all shipments of Goods are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller’s facility to destination terminal invoiced to Customer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Customer. All other shipments of Goods are made on an Ex Works (EXW) Seller’s Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Customer’s nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Customer and shall be submitted by Customer directly to the carrier. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Customer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller’s acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller’s prices at the time of shipment and will reflect any market increase in

transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

6. **Export Compliance.** Customer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Customer are established or from which Goods may be supplied, will apply to their receipt and use. In no event shall Customer use, transfer, release, import, export, Goods in violation of such applicable laws, regulations, orders or requirements.
7. **Payments & Invoices.** Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Customer in the event Customer fails to make any payment when due, which other agreements Customer and Seller hereby amend accordingly. Customer is responsible for the payment of all applicable duties, taxes, and shipping charges (unless freight is prepaid), measured by or imposed upon or with respect to the transaction, the property, its value or service performed in connection therewith. Customer is required to provide Seller with their Certificate of Sales/Use Tax Exemption for Resale, if applicable. Seller shall submit invoices to Customer within 10 days of shipping goods which include the date, Customer's Order number, shipping charges, delivery address, and quantity of delivery. Payment terms are subject to credit approval by the Seller. A credit application listing three trade references and one banking reference must be submitted and approved by the Seller before a regular Customer account can be established. All other accounts will become due for payment prior to manufacturing or shipping. Seller requires payment in full according to established terms unless prior written agreement is in place. Finance charges will be incurred at a rate of 1.75% per month on any amount past due. Any account more than 30 days past due will be placed on credit hold until the account is made current and any new Orders submitted must be pre-paid prior to shipping for any accounts with a credit hold status. Any account over 90 days past due will be turned over to collections and immediately canceled. In the event the Seller must initiate collection proceedings, the Customer shall be responsible for the Seller's cost of collection including reasonable attorney fees.
8. **Shortages & Damaged Goods.** Customer must inspect all shipments for shipping shortage and/or damage. If there appears to be damage to the shipment or a shortage in quantity, indicate so in writing when signing the shipper's proof of delivery slip. Failure to do so will result in a denial of a shortage or damage claim. Upon receipt of shipment, immediately open and inspect all units. If there is any internal damage not visible when signing for delivery, this must be reported to the carrier within 2 business days of receipt. Claims for missing accessories or product must be reported within 5 business days of receipt of shipment. Freight Paid by Seller (FOB Destination/DAP Incoterms): Seller assumes responsibility for each shipment of goods until the delivery is accepted by the consignee. Seller is not responsible for loss or damage which may occur after the consignee has accepted the consigned merchandise. Freight Paid by the Customer/Consignee (FOB Origin/Ex Works FACTORY Incoterms): The responsibility of Seller ends when the transportation company accepts and signs the bill of lading transferring the title of goods to consignee. Seller is not responsible for loss or damage which may occur after the transportation company has accepted the consigned merchandise. If any loss or damage is discovered, notify the transportation company at once.
9. **Cancellation.** Customer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.
10. **Returns.** Equipment may not be returned without first obtaining a written return materials authorization (RMA) number from the Seller. All returns are subject to a minimum 50% restocking or order cancellation fee and must be accompanied by an approved RMA. Items returned must be in their original packaging and never installed or opened. All associated parts, documentation, software, etc. originally shipped with the equipment must also be returned. For returns over 90 days from ship date, Seller may elect to decline return authorization. Orders for custom products cannot be cancelled, refunded, returned or cancelled after placement of order. Related fees such as shipping and return shipping charges are non-refundable. Defective merchandise will be repaired or replaced at Seller's discretion. Freight charges to return defective merchandise to the factory will be reimbursed via credit memo. Returned merchandise must be received at the factory within fifteen (15) days of RMA date.
11. **Warranty.** Subject to the limitations herein, Seller's standard warranty that is applicable to the Goods at the time of purchase is the only warranty applicable to the sale of Seller's Goods and its terms, conditions and limitations are incorporated by reference herein. **THE WARRANTIES SET FORTH HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR CUSTOMER'S USE OR PURPOSE.**

**SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE.** This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Customer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and the preparation of Seller's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Customer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Customer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components.

In addition, for custom Orders only, Seller warrants that all products furnished under a valid Order which are manufactured by Seller will conform to final specifications, drawings, samples, and other written descriptions approved in writing by the Seller, and will be free from defects in materials and workmanship for the warranty period set forth in its standard warranty applicable at time of purchase. The warranty period shall run from time the product is invoiced/shipped, even in the event that the Seller installs the equipment or supplies technical direction of installation by contract. All other terms and conditions of warranties for custom Orders are governed by Seller's standard warranty.

12. **Insurance.** Seller shall maintain the following insurance or self-insurance coverage: **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of \$2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of \$2,000,000 per occurrence and aggregate. CGL includes Contractual Liability. Automobile Liability insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of \$2,000,000. **Automobile Liability** insurance includes Contractual Liability, but no special endorsements. **Customer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Customer and form a basis of this bargain between the parties.**
13. **Infringement.** Subject to the limitations of the second paragraph of the following section, Seller warrants that the Goods sold, except as are made specifically for Customer according to Customer's specifications, do not infringe any valid U.S. patent or copyright in existence as of the date of shipment. This warranty is given upon the condition that Customer promptly notify Seller of any claim or suit involving Customer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of the inherent operation according to Seller's specifications and instructions of such Goods. In the event (i) such Goods are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Customer the right to continue using such Goods, or replace them with non-infringing Goods, or modify same to become non-infringing, or grant Customer a credit for the depreciated value of such Goods and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods, without liability.
14. **Limitation of Remedy and Liability. THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER "INFRINGEMENT") SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF CUSTOMER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO CUSTOMER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY CUSTOMER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**  
**CUSTOMER AGREES THAT SELLER'S LIABILITY TO CUSTOMER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Customer's risk.
15. **Safe Use.** Seller shall provide with the materials and/or goods all information necessary for the safe installation, use and maintenance of the materials and/or goods which assist to maximize their efficient use and useful life.
16. **General Provisions.** These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these terms and conditions. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Customer, such acceptance is expressly conditional upon Customer assent to any additional or different terms set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Customer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.



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