



## APPLE SHORT-TERM PURCHASE AGREEMENT

**1. SCOPE.** If Buyer has agreed, either electronically or via a signed purchase agreement with Apple to terms and conditions applicable to this sale of product, then those terms and conditions shall apply to this sale of product. If no such current agreement with Apple exists, then the terms and conditions contained herein ("Agreement") shall apply to all quotations made and contracts of sale entered into between Apple and Buyer, irrespective of whether Buyer accepts this Agreement by a written acknowledgement, by implication, or by acceptance of goods hereunder. Any term or condition on any order or other document submitted by Buyer shall be of no force or effect whatsoever and Apple Inc. ("Apple") specifically rejects any different or additional terms and conditions proposed by Buyer.

**2. NO RESALE.** Product(s) purchased shall be for Buyer's own use in its facilities in the United States (and in the case of U.S. Government agencies, in U.S. Government overseas locations, subject to U.S. export laws) and shall not be purchased for the purpose of resale to another entity or individual.

**3. NO EXPORT.** (A) Except in the case of U.S. Government agencies, products may not be purchased for export outside the United States, either directly or indirectly. (B) For U.S. Government agencies only, this Agreement is subject to all laws, regulations, orders or other limitations on the export and re-export of commodities, technical data and software. Buyer agrees that it will not export, re-export, or transfer any export controlled commodity, technical data or software (a) in violation of such limitations imposed by the United States or any other appropriate national government authority, or (b) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all licenses or necessary approvals.

**4. PRICE AND ORDERS.** (A) Prices shall be as set forth on the applicable Apple price list in effect on the date Buyer's order is accepted by Apple. Apple reserves the right to accept or decline any order, in whole or in part. Unless Buyer notifies Apple otherwise, Apple may make partial shipments of Buyer's order. Apple will not be liable for any failure to ship complete orders. Buyer will be invoiced separately for each partial shipment and will pay each invoice when due, without regard to subsequent deliveries. Apple will allocate its available inventory and make deliveries (including partial shipments) in its sole discretion and without liability to Buyer. Apple may cancel any accepted order prior to shipment, if in its sole discretion, Apple determines that it has insufficient inventory to fulfill such order. Prices include standard freight and insurance using an Apple-selected carrier. All applicable local sales or use taxes, duties, or other imposts, if any, due on account of purchases hereunder shall be paid by Buyer. Proof of tax exempt status must be on file at Apple's Support Center for any order to be treated as a tax-exempt transaction. (B) **Limited Billing Service Account.** Apple will provide Buyer a limited billing service account to use when placing service orders such as Customer Installable Parts (CIPs) and mail-in or on-site repairs. Buyer may be asked to submit a purchase order when placing a service order. Buyer acknowledges that Apple does not provide service CIP or repair pricing on an Apple price list; Apple will quote current pricing to Buyer prior to processing any purchase order, and Buyer will have the option to either accept or decline the quoted prices. In the event Buyer accepts the quoted pricing, Apple will process the purchase order under the terms of this Agreement; should Buyer decline the quoted prices, Apple will not process the purchase order.

**5. TITLE AND DELIVERY.** (A) Except in the case of U.S. Government agencies, title and risk of loss to all Products will pass to Buyer upon shipment from Apple's shipping location. For Products shipped pursuant to Apple's standard practices in all but the last week of every Apple fiscal quarter during the term of this Agreement, Apple will issue credits or replace Products returned due to damage in transit or that are lost in transit. For Products shipped pursuant to Apple's standard practices in the last week of every Apple fiscal quarter during the term of this Agreement, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. Instead, Apple will provide third-party insurance for damaged or lost Products with Buyer named as the loss payee. When not shipping Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Buyer, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit. (B) For U.S. Government agencies only, title and risk of loss to all Products will pass to Buyer upon delivery to Buyer's delivery point. If Buyer provides Apple with specific shipping instructions, Apple will use commercially reasonable efforts to ship such orders according to Buyer's instructions. Shipping charges for orders shipped under Buyer's instructions will be added to Apple's invoice, or shipped freight collect, at Apple's option. When not shipping Products pursuant to Apple's standard practices but instead shipping via a carrier selected by Buyer, Apple will not issue credits or replace Products returned due to damage in transit or that are lost in transit.

**6. PAYMENT.** Buyer will be invoiced upon shipment of products and payment of such invoice is due no later than thirty (30) days from the date of invoice. Apple will also charge any fees due from Buyer by regulation or statute, including, if applicable, fees due under the California Electronic Waste Recycling Act or similar statutes in other states. Apple reserves the right to change Buyer's credit terms at any time.

**7. SUPPORT PRODUCTS.** Support products (such as the AppleCare Protection Plan) are subject to the terms and conditions that accompany those products.

**8. LIMITED WARRANTY.** (A) The sole warranty for Apple-branded product shall be Apple's standard Limited Warranty as set forth in the documentation that accompanies each Apple product. (B) All products, other than Apple-branded product, are sold "as is" and without warranty from Apple, but may be accompanied by a manufacturer's warranty, as more particularly provided in any warranty documentation that accompanies such products. (C) APPLE MAKES NO OTHER WARRANTY TO BUYER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS. APPLE SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9. SOFTWARE RIGHTS.** (A) Buyer acknowledges that products often contain not only hardware but also software, including but not limited to operating systems and applications. Such software may be included in ROMs or other semiconductor chips embedded in hardware, or it may be contained separately on disks or on other media. Such software is proprietary, is copyrighted, and may also contain valuable trade secrets and be protected by patents. Buyer, as an end user, is licensed to use any software contained in such products, subject to the terms of the license accompanying the product, if any, and the applicable patent, trademark, copyright, and other intellectual property, federal and state laws of the United States. (B) Unless Buyer has obtained Apple's prior written consent, Buyer, in addition to any obligations or restrictions set forth in any license which may accompany a product, shall not copy the software, except to backup or for archival purposes, and Buyer shall promptly affix to any such copy the same proprietary and copyright notices as were affixed to the original. Buyer shall not disassemble, decompile, reverse engineer, copy, modify, create derivative works thereof, or otherwise change any of the software or its form.

**10. END USER INDEMNIFICATION.** (A) Apple will defend any proceeding or action brought by a third party against Buyer to the extent based on a claim that: (1) the marketing or licensed use of any Apple-branded product sold by Apple that Buyer has paid to acquire infringes any U.S. patent, copyright, trademark, trade secret, or other proprietary right of a third party; or (2) a defective Apple Product directly caused death, personal injury, or damage to tangible property (provided the product at issue has not been altered, modified, or otherwise changed by Buyer). Apple will indemnify Buyer for damages awarded to third parties solely as a result of such claims. Apple's obligation to so defend and indemnify Buyer is contingent on Buyer's compliance with the following Notice/Defense clause. (B) **Notice/Defense.** Buyer shall promptly notify Apple of any claim, demand, proceeding, or suit of which Buyer becomes aware which may give rise to a right of defense or indemnification pursuant to this section ("Claim"). Notice of any Claim that is a legal proceeding, by suit or otherwise, must be provided to Apple within thirty (30) days of Buyer's first learning of such proceeding. Notice must include an offer to tender the defense of the Claim to Apple. Apple, if it accepts such tender, may take over sole control of the defense of the Claim. That control includes the right to take any and all actions necessary to completely and finally resolve the Claim by settlement or compromise. Upon acceptance of tender, Buyer will cooperate with Apple with respect to such defense and settlement. If a Claim is settled, both parties, to the extent permitted by law, will not publicize the settlement and will make every effort to ensure the settlement agreement contains a non-disclosure provision.

**11. LIMITATION OF LIABILITY AND REMEDIES.** DIRECT DAMAGES FOR ALL CLAIMS MADE BY BUYER ARISING WITH RESPECT TO ANY PRODUCT BUYER PURCHASES FROM APPLE SHALL BE LIMITED TO THREE HUNDRED THOUSAND DOLLARS (\$300,000) FOR ALL CLAIMS ARISING OUT OF THIS AGREEMENT. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL APPLE BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOST BUSINESS PROFITS OR REVENUE, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA, OR THE COST OF THE PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES) OR FOR PUNITIVE OR EXEMPLARY DAMAGES. This Limitation is a critical element of the parties' bargained-for consideration and will be effective even in the event Apple is informed in advance of the possibility of such damages. The remedies set forth in this Agreement shall be Buyer's sole and exclusive remedies for any claims against Apple under or related to this Agreement.

**12. TERM AND TERMINATION; SURVIVORSHIP.** Unless terminated earlier as provided in this Agreement, the term of this Agreement shall be from the date Buyer signs it until March 30 or September 28 of the calendar year in which it is signed, whichever occurs first after the date of signature. Thereafter, this Agreement shall renew for additional six (6) month periods unless either party provides written notice to the contrary to the other party not less than fifteen (15) days before the expiration of any renewal term. Either party may terminate this Agreement without cause upon fifteen (15) days prior written notice. Either party may terminate this Agreement immediately in the event the other is in material breach of this Agreement. Those sections that by their nature survive expiration or termination of this Agreement will survive expiration or termination.

**13. GENERAL TERMS.** (A) **Governing Law; Venue; Limitation of Claims.** These Terms and Conditions of Sale will be governed and interpreted under the law as follows: (i) for publicly or privately held companies and private educational institutions, this Agreement will be governed and interpreted under the laws of California, U.S.A., without regard to its conflict of laws provisions. Any litigation between the parties will take place in the state or federal courts in Santa Clara County, California. Any action arising out of or related to this Agreement must be brought within one (1) year from the first date such action could have been brought. If a longer period is provided by statute, the parties hereby expressly waive it; (ii) for public educational institutions or state/local government entities, this Agreement will be governed and interpreted under the laws of the state in which Buyer is located; (iii) for U.S. Government agencies this Agreement will be governed and interpreted in accordance with federal law. (B) **Severability.** If a court of competent jurisdiction holds that any provision of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect, and the parties will replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent of the parties and economic effect of this Agreement. (C) **Waivers.** A party's waiver of any breach by the other party or failure to enforce a remedy will not be considered a waiver of subsequent breaches of the same or of a different kind. (D) **Assignments.** Buyer shall not assign its order, or any interest therein, or any rights hereunder without the prior written consent of Seller. (E) **Entire Agreement.** This Agreement contains all the agreements, warranties, understandings, conditions, covenants, and representations made between Buyer and Apple. Neither Buyer nor Apple will be liable for any agreements, warranties, understandings, conditions, covenants, or representations not expressly set forth or referenced in this Agreement. Buyer acknowledges that Apple refuses any different or additional provisions in purchase orders, invoices, or similar documents, and such refused provisions will be unenforceable. (F) **Modifications.** No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party.

### Caution to Signatory

The person signing this Agreement certifies that he or she has authority to contractually bind his or her organization to the terms and conditions of this Agreement. Please check to make certain that you have that authority.

Entity Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

Email Address: \_\_\_\_\_