

NATIVE INSTRUMENTS North America Inc. 6725 Sunset Blvd. 5th Floor Los Angeles CA 90028 USA

Ship to:  
anthony coffee  
1810 Washington Ave  
VINELAND, NJ 08361

Bill to:  
anthony coffee  
1810 Washington Ave  
VINELAND, NJ 08361

Order Confirmation

January 10, 2024

Order no.: 8657043  
Your Ref.: 60001108729C  
Customer No.: 10400020

Shipping method: Download  
Payment method: PayPal

Pos.	Description	Quantity	Unit price	Amount
1	Kontakt 7 Bundle <div>Article No.: 28760Country of Origin: DE</div>	1	149.50102	149.50
Subtotal in USD				149.50
+ Tax 6.625%				9.90
Order amount in USD				159.40

## General Terms and Conditions

Native Instruments North America, Inc.

Latest Version May 2015.

"Seller" means Native Instruments North America, Inc., a California corporation. "Reseller" means the legal entity or person who is authorized by Seller to resell a Good or Service to a subsequent purchaser, including, but not limited to, End-Users (as defined hereinafter), distributors, retailers, and exporters and buys such Good or Service from Seller for that purpose. "End-User" means the legal entity or person who buys a Good or Service directly from Seller or Reseller for his, her or its own use. "Buyer" means the legal entity or person purchasing Goods or Services from Reseller or Seller, as the case may be, and may refer to either an End-User or Reseller. For the avoidance of doubt, an entity or person who registers, uses, downloads and/or activates a Good or Service is considered a "Buyer" and cannot be a "Reseller," and a Buyer who purchases directly from Seller's webstore, another online retailer, or from a physical retail store cannot be a "Reseller." Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties." "Goods" means the goods originally offered by Seller and "Services" means any services provided by Seller to the Buyer. "Offer(s)" means any offer by Seller to sell Goods or provide Services to Buyer. "Order(s)" means any present or future purchase order or similar instrument issued by Buyer to Seller to purchase Goods or Services.

### 1. Complete Agreement and other Terms and Conditions

These terms and conditions ("Terms and Conditions") along with any Seller provided price list, schedule, quotation, acknowledgement or invoice issued or provided in connection with the sale of Goods and the provision of any Services, and all 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 and/or the provision of Services and any future sale of Goods and/or provision of Services to Buyer, even if not separately agreed to again ("Agreement"). Any and all prior statements, representations and agreements relating to the subject matter hereof, but not incorporated herein, are excluded and superseded hereby. By placing a purchase order, Buyer expressly consents to these Terms and Conditions with respect to the purchase of Goods and the provision of any Service. EXCEPT AS EXPRESSLY SET FORTH HEREIN OR AS AGREED TO OTHERWISE, SELLER HEREBY OBJECTS TO AND REJECTS THE PROVISIONS OF ANY BUYER PURCHASE ORDER, CONFIRMATION OR TERMS AND CONDITIONS WHICH ARE INCONSISTENT WITH OR IN ADDITION TO THE PROVISIONS OF THIS AGREEMENT.

### 2. Orders by Minors

If you are under the age of eighteen (18), or the applicable age of majority in your state or jurisdiction, you must (i) obtain the permission of your parent or guardian prior to purchase of Goods and Services, and (ii) obtain any necessary authorization from your parent, guardian or applicable third party to charge the credit card or other payment method.

### 3. Offer and Acceptance

Acceptance of Seller's Offers and of Buyer's Orders, and any changes or amendments thereto, is expressly conditioned upon Buyer's assent to this Agreement. Seller's failure to object to any terms or any other provisions contained in any communication from Buyer, including, but not limited to, Buyer's Orders, does not waive any of the terms specified herein. Seller's acceptance of any resulting Order or Buyer's receipt of Goods and/or Services, whichever occurs first, will conclusively evidence Buyer's unconditional acceptance of these Terms and Conditions. All Offers, Orders and other documentation between Buyer and Seller shall be non-binding unless expressly stated otherwise and become effective and binding only when approved by Seller. Seller reserves the right to make reasonable technical and other changes to the Goods or the Services. In the event that Seller has made an Offer to Buyer that is expressly stated in writing as binding, Seller shall be bound by the terms of such Offer for two (2) weeks, unless provided for otherwise in writing.

### 4. Return Policy

The sale of all new Goods is subject to Seller's return policy contained herein, except as may be specifically set forth in separate documentation with Resellers, the terms of which shall control.

End-Users shall be entitled to return Goods they purchased from Seller within fourteen (14) days of the original date of purchase from Seller for a refund of the purchase price, provided that such Goods contain the appropriate factory seal and original packaging, with no indication that such Goods have been opened or tampered with (and, in cases of software, that the software has not already been downloaded, registered or activated), and are returned together with a proof of purchase.

In case of a warranty claim, End-Users shall be entitled to return qualifying Goods within the applicable warranty period, so long as such qualifying Goods are in their original or equivalent packaging, with equivalent packaging meaning that the relevant Goods are returned by such End-User to Seller in complete and undamaged condition, together with a proof of purchase. All express warranties provided by Seller herein shall become null and void if any hardware component of a Good is opened by an End-User for any reason, such as for attempts at repair.

If a Reseller is entitled to return Goods, Reseller must return qualifying Goods to Seller in their original and unopened packaging, together with a proof of purchase.

Buyer is responsible for risk of loss, shipping and handling fees for returning or exchanging Goods, unless otherwise expressly stated herein. Additional fees, including a re-stocking fee of up to 15% of the original purchase price, may apply.

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No Goods may be returned without Seller's prior authorization, as evidenced by a return authorization. Once a return authorization number is obtained, Buyer will return Goods, transportation and insurance prepaid, to the address provided by Seller and in accordance with instructions issued by Seller. Failure to follow Seller's return procedures may result in lost Goods, delays, additional service charges, restocking charges, warranty denial, or refusal of a shipment. Seller has the right to reject Goods returned without the correct return authorization number clearly marked on the outside of the shipping container. Granting a return authorization number does not necessarily mean that a credit will be approved or that the evaluation or repair will take place without a fee.

If Buyer refuses to pay for any duties and taxes owed on a Good or Service and requests, and Seller in its sole discretion agrees to grant a refund on such Good or Service even after agreeing to the Terms and Conditions, then the refunded amount will exclude the cost of return shipping and any duties and taxes incurred during transit.

If Goods are returned after the applicable warranty period, if any, has expired, End-User shall pay the full cost to repair or replace such Goods, and End-User shall be solely responsible for risk of loss, shipping and handling fees for the return of such Goods to Seller for repair or replacement.

Seller will only issue a return authorization to Buyer, and will only cover the cost of the return shipment and other applicable fees (e.g., customs fees and taxes, etc.), if Buyer returns qualifying Goods from the original country of purchase.

If Buyer fails to follow the return or exchange instructions and policies provided by Seller, Seller is not responsible for Goods that are lost, damaged, modified or otherwise processed for disposal or resale. At Seller's discretion, credit for partial returns may be less than invoice or individual component prices due to bundled or promotional pricing.

In addition, any repaired Ex Works Goods which are not claimed by Buyer within 48 hours of notice of the completion of repairs shall be subject to a monthly storage fee equal to 2% of the original purchase price of the Goods.

## 5. Software License

Software is subject to the separate software license agreement accompanying or made available to Buyer in connection with the software, in particular Seller's End User License Agreement ("EULA"). In case of any discrepancies between the EULA and this Agreement, the EULA shall prevail.

The content on Seller's website, <http://www.native-instruments.com/#/en/>, are protected by copyright and other intellectual and proprietary rights throughout the world. Unless they are expressly and unambiguously labeled as being for sale, or carry an express and unambiguous price tag, they are intended for demonstration purposes only (in particular, and not limited to, audio recordings, pictures, videos, and images). They may not be downloaded, modified, reproduced, distributed, publicly displayed, exploited, and/or used in any other way without the agreement of Seller.

## 6. Prices

Unless agreed to otherwise in writing by Seller, all prices are stated in U.S. Dollars. The prices offered apply only to the specific quantities, specifications, and delivery schedules set forth in Seller's shipping confirmation. Any variation in quantity, specifications, or delivery schedules may necessitate a price and/or delivery schedule adjustment. All prices relate to the particular Good or Service only, and, in particular, the prices do not include the costs of shipping, taxes or related fees, installation, instruction or other auxiliary services, unless otherwise agreed to by Seller in writing.

In the event that the Goods or Services are being purchased by Resellers and a term has not been agreed to in writing by the Seller, the prices are in U.S. Dollars Ex Works Voerde or Shenzhen, China (Incoterms 2010) without applicable taxes and packaging.

## 7. Payment and Acceptance; Payment Terms; Interest

Unless otherwise agreed to by Seller, payment must be received by Seller prior to Seller's acceptance of an Order. Payment for the Goods and Services will be made by debit or credit card, wire transfer, PayPal or some other equivalent or prearranged payment method unless credit terms have been agreed to by Seller. For the avoidance of doubt, all payments of Goods or Services purchased for own use by End-Users must be made in advance of any acceptance, shipment, commencement or performance of Goods or Services of an Order by Seller.

Invoices for purchases by Resellers are due and payable within the time period noted on the invoice, measured from the date of the invoice but in no event later than thirty days (30) days after receipt of invoice. Seller may invoice parts of an Order separately. Seller is not responsible for pricing, typographical, or other errors in any Offer by Seller and reserves the right to cancel any Orders arising from such errors.

All amounts due to Seller but not paid by Buyer on the due date bear interest payable by Buyer to Seller in U.S. Dollars at a rate that is equal to the lesser of (i) one and one-half percent (1.5%) per month, or (ii) the maximum interest rate permitted under applicable law. If Buyer's payment method fails or Buyer's account is past due after a Buyer's receipt of Goods and/or Services, as the case may be, Seller may take steps to collect past due amounts using other collection mechanisms, including third party collection agencies. Buyer will also be liable to Seller for any expenses incidental to collection of past due amounts, including reasonable attorney's fees and court costs.

If, prior to shipment of Buyer's Order, Buyer fails to fulfill the terms of payment of any prior invoice submitted by Seller or, if in the sole opinion of Seller, Buyer's financial condition becomes impaired or unsatisfactory, Seller reserves the right to change, without notice, the terms of payment and/or delay or discontinue further shipments, without prejudice to any other available legal remedies, until past due obligations have been paid and Seller has received acceptable assurance regarding Buyer's

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prompt payment of future obligations.

Seller retains the right to demand advanced payment from all Buyers, based upon a Buyer's creditworthiness, as solely determined by Seller.

## 8. Shipment Terms and Risk of Loss

If the Goods are purchased by Reseller, the risk of loss or damage passes from Seller to such Reseller at the latest upon delivery of the Goods to the shipper, freighter, or person named by Reseller at the time of the Order. Loss or damage that occurs during shipping is Reseller's responsibility.

If the Goods are purchased by End-User from Seller, the risk of loss or damage passes from Seller to such End-User upon the receipt of the Goods by the End-User.

For both End-Users and Resellers, Buyer must notify Seller within fourteen (14) days of the date of invoice or acknowledgement if Buyer believes any part of its purchase is missing, wrong or damaged. Shipping and handling costs, duties, insurance and taxes are in addition to the stated purchase price unless otherwise expressly indicated at the time of sale. If Seller prepays shipping, duties, insurance, or other related costs, Buyer agrees to reimburse Seller promptly for the actual costs incurred by Seller. In case of the transmission of software via Internet, in particular via electronic mail or internet download, risk of loss and the risk of damage or changes to the software shall pass to Buyer upon complete receipt of the applicable software.

In the event that a purchase is by Reseller, Reseller acknowledges and agrees that it may be subject to additional fees if Seller has provided notice to Reseller of readiness to ship the Goods and Reseller (i) refuses to take over the Goods on the named date, (ii) it does not pick the Goods up or (iii) have the Goods picked up by a transporting party on the named date.

## 9. Packing and Packaging

Seller's prices for Goods include Seller's standard commercial packing and packaging. Any non-standard or special packing or packaging requirements requested by Buyer will be provided by Seller at additional cost to Buyer.

Reseller understands and agrees that Seller enjoys a reputation for high quality of the Goods, so Reseller agrees to use its best efforts to resell the Goods to a subsequent purchaser (including, but not limited to, an End-User) in their original packaging (including applicable factory seal), which is critical to retain, promote, enhance and maximize the goodwill of the trademark, brand and other relevant intellectual property rights of Seller. If the Goods in Reseller's inventory are not in original packaging and/or such packaging has evidence of being opened, tampered with, and/or altered, Reseller shall immediately notify Seller of the non-conforming condition of the applicable Goods' packaging and Seller and Reseller shall agree to replace the applicable Goods in Reseller's inventory on mutually agreeable terms.

## 10. Taxes and Duties

The amount of any present or future sales, use, excise, import or export duty or other tax applicable to the manufacture, sale, or lease of Goods or provision of Service will be added to the invoice and must be paid by Buyer. Seller bears no responsibility for the amount associated with such taxes or duties. Buyer is responsible for all duties, sales and other taxes associated with the Order.

## 11. Security Interest

Buyer hereby grants to Seller a first priority purchase money security interest in the Goods and in all proceeds from, all accessions to, substitutions and replacements for such Goods to secure performance of all of Buyer's obligations hereunder, and if required by Seller, Buyer shall execute and deliver such separate security agreement(s), financing statements or other documents as may be necessary to evidence or perfect such security interests.

## 12. Not for Resale or Export

Buyer agrees to comply with all applicable laws and regulations where Buyer is located. Buyer agrees and represents that Buyer is buying for its own internal use only, and not for resale or export unless Seller expressly authorizes such resale or export in writing as part of and prior to the acceptance by Seller of any Orders from Resellers. In case of such authorization, Buyer is solely responsible for compliance with applicable export and import laws in and under United States laws and the laws of the jurisdiction in which the Goods were originally purchased (if different from United States), and Buyer shall have the sole responsibility to obtain applicable licenses to export, re-export or import.

If Seller authorizes resale of the Goods by Reseller, such Reseller hereby covenants to resell the Goods to a subsequent purchaser (including, but not limited to, an End-User) in their original packaging (including applicable factory seal), with no evidence or knowledge that such Goods have been opened or tampered with. Reseller shall not make any modification or alteration, material or immaterial, to the original packaging of the Goods prior to resale to any subsequent purchaser.

Reseller further covenants to Seller to place or display the Goods in a manner (i) that results in the Goods being more prominently displayed at the point of sale, shelf, or any other applicable display presentation than used, damaged and/or prior versions of the relevant Goods at such Reseller's retail store, website, and any other on-line sales medium, (ii) that it appears clear to a potential purchaser that the Goods are new and in original packaging, and (iii) that used, damaged and/or prior versions of the relevant Goods are clearly marked as being "used", "damaged" and/or a "prior version" of the relevant Goods.

## 13. Delivery Schedules

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Shipping and delivery dates for Goods and commencement of Services dates provided in Seller's confirmation are estimates only. Shipping and commencement dates are approximate and require prompt receipt of all necessary Buyer-furnished information and material if applicable.

Depending on the kind of subject of the delivery and the manner of sales, deliveries occur either by means of physical shipment or by means of download by the End-User.

In the event that the purchase of Goods is made by Resellers and terms of delivery have not been agreed to in writing, Seller shall use reasonable business efforts to deliver Goods upon availability at Seller's plant and notify Reseller of readiness of shipment or delivery to a transporting party. In the event of delivery by download, Seller shall use reasonable business efforts to make the download available to End-User during the term of the delivery period.

Seller retains the right to refuse to handover Goods to the transporting party if secure and safe loading cannot be provided based upon the condition of the transporting party's vehicle or based upon any other safety concerns.

## **14. Late Deliveries and Force Majeure**

Seller is not liable for any damages, re-procurement costs, or penalties related to late deliveries. Without limiting the generality of the foregoing, Seller is not liable for delays due to force majeure, including, but not limited to, weather conditions, acts of God, acts of civil or military authorities, fires, strikes, job actions, floods, earthquakes, epidemics, quarantine restriction, war, terrorism, riot, supplier or vendor delays, or any other causes beyond the reasonable control of Seller. In the event of such delay, Seller will promptly notify Buyer and the date(s) of delivery will be deferred for a period commensurate with the time lost due to the delay. If the excusable delay under force majeure continues for more than ninety (90) days, Seller and Buyer will each have the option of terminating the affected Order(s) after two weeks prior written notice. If Seller's production is curtailed for any of the above reasons so that Seller is unable to deliver the full quantity of Goods scheduled for delivery to Buyer, Seller may allocate deliveries of available Goods among its various Buyers then on order for similar Goods. The allocation will be made in a commercially fair and reasonable manner. When such allocation has been made, Buyer will be notified of the estimated quota made available.

## **15. Cancellation and Termination**

Seller has the sole discretion to cancel a Buyer's Order. Either Party may terminate an Order if the other Party breaches a material provision of this Agreement or of the Order. In the event that a Party (the "Defaulting Party") is in breach of a material provision of this Agreement or the Order, the other Party (the "Non-Defaulting Party") will submit a written cure notice to the Defaulting Party advising of such breach. The Defaulting Party will have fourteen (14) days to cure the breach. If the Defaulting Party does not cure the breach within the fourteen (14) day period, the Non-Defaulting Party may terminate the applicable Order.

## **16. Change Orders and Amendments**

All change order requests must be submitted by the Buyer to the Seller in writing and will not be effective unless and until Seller consents in writing to the change(s). Seller will advise Buyer in writing of the price and/or delivery schedule impact, if any, of the change request. Seller's acceptance of changes will be subject to Buyer's agreement to any price and/or delivery schedule adjustments.

## **17. Limited Warranty**

This limited warranty applies solely to Goods and Services purchased by an End-User, and shall not apply to any secondary purchasers of the Goods or Services or any successors or assigns of an End-User, without the prior written consent of Seller. The limited warranty applies for the time period provided in documentation included or otherwise provided together with the Goods or Services. If a specific warranty period is not expressly stated with the relevant Good or Service, then Seller warrants that (a) Goods that are accessories, including, but not limited to, power supplies, AC adapters, cables, supplements, control vinyls and compact discs, shall conform to their specifications in all material respects for a period of ninety (90) days, and (b) the Goods manufactured and Services provided by Seller will conform to their specifications in all material respects for a period of twelve (12) months from the date of original purchase. For clarification only, in the case of shipments of Goods, the date of original purchase shall be the date of original shipment of such Goods.

In the event that an End-User identifies any non-conformities, such End-User will promptly notify Seller and describe the symptoms of the non-conformities with reasonable detail. For the avoidance of doubt, Seller does not warrant the quality or accuracy of advice, information, or any other support given by members of its telephone, online or web-based customer service or support teams.

Seller, at its sole discretion, will either repair or replace or credit the purchase price, and also credit any applicable shipping cost, paid by End-User or Reseller for any such Goods found by Seller to be defective, provided that End-User or Reseller returns such qualifying Goods from the original country of purchase of the relevant Goods, together with a proof of purchase unambiguously showing the date of purchase. Seller's warranty does not apply to any Goods that have been subjected to improper installation, defective hardware or software environment, improper operation, misuse, alteration, unauthorized repair, neglect, accident, inundation, fire, or the like. In case of a replacement, the return procedure referred to in Section 4 hereof shall apply.

End-User shall accept any equal or newer versions of the Good as a replacement if reasonable under the circumstances. End-User shall support the Seller in the analysis of any defect by providing all reasonably necessary information and reasonable time and opportunity to cure any defects. Seller is entitled to remedy any defects remotely and End-User shall, after reasonable notice, provide Seller with access to its computer system and networks as necessary to remedy defects to the Goods. End-User shall reimburse Seller for any costs and expenses and labor incurred if no defect covered by the warranty hereunder exists, or if End-User reported a defect incorrectly or

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incompletely. The burden of proof shall be on End-User.

Seller shall furnish, undertake, or provide (or cause to be furnished, undertaken or provided) any Services in a workmanlike manner and in accordance with the provisions of the Order. End-User shall notify Seller immediately if Services are non-conforming. If Seller determines, in its sole discretion, that the Services were not provided in a workmanlike manner and in accordance with the Order, Seller shall provide additional services to rectify any non-compliance with the Order's requirements.

Seller warrants that (i) refurbished products a customer receives from Seller, (ii) defective Goods which Seller repairs, (iii) non-conforming Services for which Seller provided additional services, or (iv) any replacement products or services a customer receives from Seller, unless expressly set forth by Seller to the contrary, will conform to its specifications in all material respects for the greater of (a) a period of ninety (90) days from the date of purchase or receipt of such repaired or replacement product, or additional or replacement service, as applicable, and (b) the remainder of the original warranty period of the defective Good or Service, whichever is greater.

THESE EXPRESS WARRANTIES, INCLUDING REMEDIES, ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, OF SATISFACTORY QUALITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF ACCURACY, AND OF QUIET ENJOYMENT. SELLER DOES NOT WARRANT AGAINST INTERFERENCE OF BUYER'S ENJOYMENT OF THE GOODS OR SERVICES, OR THAT THE GOODS OR SERVICES WILL MEET BUYER'S REQUIREMENTS OR SPECIFICATIONS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER, ITS AFFILIATES, OR ANY OF THEIR EMPLOYEES SHALL CREATE A WARRANTY. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD CONTAINED HEREIN. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS OF THE DURATION OF IMPLIED WARRANTIES, SO THESE LIMITATIONS MAY NOT APPLY TO YOU. THE WARRANTY CONTAINED IN THIS AGREEMENT GIVES BUYER SPECIFIC LEGAL RIGHTS, AND BUYER MAY ALSO HAVE OTHER RIGHTS WHICH MAY VARY FROM JURISDICTION TO JURISDICTION. IN THE CASE OF GOODS OTHER THAN THOSE OF SELLER'S OWN MANUFACTURE, SELLER MAKES NO WARRANTIES, EXPRESS, STATUTORY, OR IMPLIED. ANY LITIGATION TO ENFORCE THE WARRANTY CONTAINED OR REFERRED TO HEREIN MUST BE COMMENCED NO LATER THAN ONE (1) YEAR AFTER DISCOVERY REASONABLY SHOULD HAVE BEEN MADE OF ANY FACTS OR OTHER INFORMATION SUGGESTING THE EXISTENCE OF A NON-CONFORMANCE OF A SERVICE OR A GOOD.

## 18. Limitation of Liability

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, UNDER NO CIRCUMSTANCES IS SELLER LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, OR ANY DAMAGE OF AN INDIRECT OR CONSEQUENTIAL NATURE ARISING OUT OF OR RELATED TO ITS PERFORMANCE UNDER THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, LOSS OF REVENUE OR PROFITS, OR RESULTING FROM ANY LOSS OF DATA OR DAMAGE TO BUYER'S COMPUTER OR EQUIPMENT), WHETHER BASED UPON BREACH OF THIS AGREEMENT, WARRANTY, PATENT INFRINGEMENT, OR NEGLIGENCE AND WHETHER GROUNDED IN TORT, CONTRACT, CIVIL LAW, OR OTHER THEORIES OF LIABILITY, INCLUDING STRICT LIABILITY, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SELLER'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LIABILITY FOR INDEMNITY, DEFENSE, AND HOLD HARMLESS OBLIGATIONS EXCEED THE AMOUNT PAID TO SELLER UNDER BUYER'S ORDER AND BUYER AGREES TO INDEMNIFY SELLER FOR ANY EXCESS AMOUNTS. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE BUYER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION(S) OF THIS AGREEMENT, SUCH PROVISION(S) WILL BE REGARDED AS AMENDED TO WHATEVER EXTENT REQUIRED TO MAKE SUCH PROVISION(S) CONSISTENT WITH THIS PROVISION. SOME JURISDICTIONS DO NOT ALLOW A LIMITATION ON LIABILITY FOR NEGLIGENCE THAT CAUSES DEATH OR PERSONAL INJURY AND, IN SUCH JURISDICTIONS, SELLER'S LIABILITY SHALL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## 19. Third Party Intellectual Property

Seller represents and warrants to the Buyer that, to its knowledge, it is the owner of, or is otherwise authorized to use, all patents, processes, specifications, information, materials, trade secrets, trademarks, and logos in connection with any Goods or Services sold to Buyer pursuant to this Order. Seller additionally represents and warrants that, to its knowledge, the use by Buyer of any or all of the Goods or Services as contemplated by this Order will not infringe upon, or violate, in any manner or fashion, the intellectual property rights of any third party in Buyer's original country of purchase.

## 20. Specifications and System Requirements

All technical specifications of the Goods and/or Services provided by Seller are intended to be estimates or approximations or design aims rather than guarantees and all such specifications shall be in writing.

End-User is solely responsible for, prior to purchase, ensuring that End-User's devices are compatible and meet the system requirements for Goods or Services, and that the applicable Goods or Services meet End-User's requirements or specifications.

## 21. Governing Law

The laws of the State of California, excluding its conflicts of laws principles, govern the interpretation, construction, performance and enforcement of the Terms and Conditions and Buyer's Order. Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction and venue of any California State or Federal court sitting in Los Angeles County, California in any action or proceeding arising out of or relating to the Terms and Conditions or the Buyer's Order. Each of the parties hereto hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. The parties agree that the United Nations Convention on the International Sale of Goods (CISG) of April 11, 1980 shall not apply.

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## **22. Assignment**

Buyer may not assign or transfer this Agreement or any Order, in whole or in part, without the prior written approval of Seller, the terms of which may be specifically set forth in separate documentation with Buyer.

## **23. Unenforceable Provisions**

In the event that one or more provisions of this Agreement is held to be unenforceable, the remaining provisions apply in full and the invalid or unenforceable provision will be replaced by a provision that lawfully enforces the Parties' intention underlying the invalid or unenforceable provision.

## **24. Amendment and Interpretation**

This Agreement may be amended or modified only by written agreement of duly authorized representatives of both Parties. Regarding any provisions of an Order which conflict with, are inconsistent with or are in addition to the provisions of the Terms and Conditions, such provisions of the Order shall control, so long as it is expressly intended to supersede the Terms and Conditions.