

**NEOMAGIC'S TERMS AND CONDITIONS OF SALE (ACKNOWLEDGEMENT)**

**1. CONTROLLING TERMS:** The items and conditions of sale contained herein shall apply to all sales by NeoMagic Corporation and to all purchase orders or other offers accepted by NeoMagic. These terms and conditions may in some instances conflict with or add to some of the terms and conditions affixed to the purchase order or the procurement document issued by the Customers. In such case, the terms and conditions contained herein shall govern exclusively and ACCEPTANCE OF CUSTOMER'S ORDER IS EXPRESSLY CONDITIONED UPON CUSTOMER'S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED HEREIN irrespective of whether the Customer accepts these conditions by oral or written acknowledgement, by implication or by acceptance of or payment for the products ordered hereunder. Any additional different or conflicting terms or conditions on any such document issued by customers either before or after issuance of this acknowledgement are hereby objected to by NeoMagic and any such document shall be inapplicable to any sale made under this acknowledgement and shall not be binding in any way on NeoMagic.

**2. TERMS OF PAYMENT:** All payments are due and payable thirty (30) days from the date on which the applicable invoice is issued or earlier, based on credit arrangements allowed by NeoMagic on a customer by customer basis. Accounts that are past due will be subject to a monthly charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less. All payments shall be made to NeoMagic at 3250 Jay Street, Santa Clara, CA 95054, or such other location or bank accounts as NeoMagic may request. All shipments, deliveries and performance of work covered by this acknowledgement shall be subject to the approval by NeoMagic of Customer's credit standing, and NeoMagic may decline to make any shipments or deliveries, or perform any work, except upon receipt of payment or upon terms and conditions or security arrangements satisfactory to it.

**3. PRICES:** Prices for the goods are those shown on the face of this acknowledgement, provided, however, that if such prices are based on the purchase of a minimum quantity of goods and Customer fails to purchase such minimum quantity NeoMagic has the right to collect from Customer the difference between the price paid by Customer for the goods purchased and NeoMagic's standard price for such goods in quantity actually purchased by Customer. As security for Customer's performances of its obligations, Customer grants NeoMagic a purchase money security interest in all goods sold by NeoMagic to Customer. NeoMagic is authorized to execute and file, on Customer's behalf, a financing or other statement evidencing this security interest. When necessary, Customer agrees to execute necessary documentation for perfecting such security interest.

**4. TAXES:** Unless otherwise stated on the face hereof, the prices quoted in this acknowledgement do not include customs duties or sales, use, excise or other similar taxes. Customer shall pay in addition to the prices quoted, the amount of any such present or future duties or applicable taxes to the sale of goods or performances of services covered by this acknowledgement. In lieu thereof, Customer shall supply NeoMagic with an appropriate tax exemption certificate.

**5. DELIVERY:** The delivery dates set forth on this acknowledgment are approximate only. NeoMagic is not liable for any damages to Customer, nor shall NeoMagic be in breach of its obligations to the Customer because of any delivery made within a reasonable time after the stated delivery date. NeoMagic may by written notice to Customer change any delivery date, and such date shall become the agreed upon delivery date unless Customer objects to such date in writing delivered to NeoMagic within ten (10) days of receipt of NeoMagic's notice. NeoMagic shall not be liable for any late delivery caused by the failure of Customer to provide in timely manner any necessary information to affect such delivery.

**6. FORCE MAJEURE:** NeoMagic is not liable for any failure to deliver, or delay in the delivery of, any goods or services due to a cause beyond its control, including, but not limited to, acts of God, fires, typhoons, earthquakes, labor disputes, governmental actions or inability to obtain materials, components, energy, manufacturing facilities or transportation. In the event of any such delay, the date of delivery or performances hereunder shall be extended by a period equal to the time lost by reason of such delay in the event NeoMagic's production is curtailed to for any of the above reasons. NeoMagic may allocate its production among its various customers. Such allocation shall be in a commercially fair and reasonable manner.

**7. EXWORKS AND RISK OF LOSS:** All shipments covered by this acknowledgement are EXWORKS (EXW) NeoMagic's facility or sub-contractor, as applicable (per INCOTERMS 2000). NeoMagic's liability for delivery shall cease, and title and all risk of loss or damage to the goods shall pass to the Customer upon delivery to the carrier.

**8. INSPECTION AND ACCEPTANCE:** In the event Customer inspects, or causes its representative to inspect, the goods supplied hereunder, Customer or its representative shall immediately notify NeoMagic of any nonconformity to specification. Customer shall accept or reject goods within thirty (30) days of receipt of each shipment. Customer's failure to notify NeoMagic in writing of nonconforming goods within such period shall be deemed an unqualified acceptance.

**9. WARRANTY:** NeoMagic warrants that for a period of one (1) year from the date of shipment, goods delivered hereunder will meet the specification stated on the front of the acknowledgement or on the documentation accompanying the goods. If, during the one year period, (a) Customer notifies NeoMagic in writing promptly upon discovery of the goods failure to meet specifications or of defects in the goods, (b) the goods are returned at Customer's expense to NeoMagic, and (c) NeoMagic's examination of the goods reveal that they either do not conform to specification or are defective and the defects were not caused by Customer accident, abuse, misuse, neglect, alteration, improper installation or repair, then within a reasonable time NeoMagic will (at its sole option) either repair, replace or credit the Customer for the goods. Prior to any return of goods, Customer must afford NeoMagic the opportunity to inspect the goods at the Customer's location. Any goods repaired or replaced by NeoMagic under this warranty will be returned by NeoMagic to Customer, transportation prepaid and NeoMagic will reimburse Customer for any transportation charges paid by Customer for such goods. The performance of this warranty does not extend the warranty period for any goods beyond that period applicable to the goods originally delivered.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, EITHER IN FACT

OR BY OPERATION OF LAW STATUTORY OR OTHERWISE INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEOMAGIC NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SALE, INSTALLATION, OR USE OF ITS PRODUCTS AND NEOMAGIC MAKES NO WARRANTY WHATSOEVER FOR PRODUCT NOT MANUFACTURED BY NEOMAGIC. NEOMAGIC SHALL NOT BE LIABLE FOR DAMAGES DUE TO DELAYS IN DELIVERIES OR USE AND SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER ARISING FROM CONTRACT TORT OR NEGLIGENCE, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF GOODWILL, OVERHEAD, OR OTHER LIKE DAMAGES.

**10. BREACH:** Any one of its following acts shall constitute a breach of Customer's obligation hereunder, (a) failure to make payment for any goods or services from NeoMagic when due; (b) failure to accept conforming goods or services supplied hereunder; (c) return of any goods shipped to Customer hereunder without the prior written consent of NeoMagic; (d) filing of a voluntary petition in bankruptcy of any proceeding insolvency or bankruptcy (including reorganization), appointment of a trustee or an assignment for the benefit of creditors of Customers; or (e) any other act by Customer in violation of any of the provisions of this acknowledgement. In the event the Customer breaches this acknowledgement in any manner set forth above, NeoMagic may, by written notice to Customer, rescind or terminate the order covered by this acknowledgement, or any part thereof, without any liability whatsoever, in addition to pursuing any other rights and remedies available to NeoMagic. Customer shall pay all costs, including reasonable attorney's fees, incurred by NeoMagic in any action brought by NeoMagic to collect payment owing or otherwise enforce its rights under this acknowledgement.

**11. INFRINGEMENT INDEMNIFICATION:** Subject to the limitations set forth below, NeoMagic will indemnify and hold Customer harmless from and against any and all actions, liability, loss, damage, costs, or expense (including reasonable attorney's fees) arising from a claim that any product, or any part thereof, sold by NeoMagic infringes any trademark or copyright of third parties. Customer shall give prompt written notice of any suit to NeoMagic and shall allow NeoMagic to control and defend any such action claim, or suit through NeoMagic's counsel at NeoMagic's sole expense, and shall provide reasonable assistance to NeoMagic in connection with such action, claim or suite. NeoMagic shall have sole control of the defense of any action and all negotiations for its settlement or compromise. If the goods, or any part thereof, are, or in NeoMagic's opinion are likely to become, the subject of a claim of infringement, NeoMagic may at its option and expense either (i) procure for Customer the right to continue using the goods or part thereof, (ii) replace or modify the goods or part thereof to make them noninfringing or (iii) remove the goods or part thereof, and grant the Customer a credit for the depreciated value thereof. The sale of any goods hereunder does not convey any license by implication, estoppel, or otherwise covering combinations of any goods with other devices or elements. IN NO EVENT SHALL NEOMAGIC'S TOTAL LIABILITY TO CUSTOMER UNDER THIS PARAGRAPH EXCEED THE PURCHASE PRICE OF THE ALLEGED INFRINGING GOODS. THIS PARAGRAPH SETS OUT CUSTOMER'S SOLE REMEDY AGAINST NEOMAGIC AND NEOMAGIC'S SOLE LIABILITY TO CUSTOMER WITH RESPECT TO INFRINGEMENT OF ANY PATENT, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

**12. ORDERS FOR CUSTOM PRODUCTS:** All order for goods built in whole or in part, to specifications unique to Customer (hereinafter Customer Products), must be for a minimum specified by NeoMagic for Customer Products of that type. Customer shall accept and pay for the total number of units delivered pursuant to such orders and may not cancel such orders without the prior consent of NeoMagic.

**13. ORDER CANCELLATION:** If an order for goods or services (other than Custom Products) is canceled, Customer must pay for orders scheduled for delivery or performances within one hundred twenty (120) days of NeoMagic's receipt of cancellation notice.

**14. ASSIGNMENT:** The Customer may not assign its rights or obligation under this acknowledgement without the prior written consent of NeoMagic and any purported assignment without such consent shall be void and of no force or effect.

**15. WAIVER:** Any waiver by NeoMagic of any default by the Customer hereunder shall not be deemed to be a continuing waiver of such default or a waiver of any other default or of any of the terms and conditions of this acknowledgement.

**16. AMENDMENTS:** The terms and conditions of this acknowledgement may not be superseded, modified, or amended except in a writing stating that it is a modification and signed by an authorized representative of each party hereto, provided, however, that NeoMagic may modify the specifications of the goods sold hereunder if the modification does not change the form, fit or function of the goods.

**17. ENTIRE AGREEMENT:** This acknowledgement (not including any of the terms and conditions of the Customer's purchase order or any similar document issued by Customer) constitutes the entire agreement between the Customer and NeoMagic with regard to the goods or services listed on the face of the acknowledgement, and expressly supersedes and replaces any prior or contemporaneous agreements, written or oral, relating to such goods and services.

**18. APPLICABLE LAW:** This acknowledgement is governed by, construed and enforced in accordance with the laws of the State of California. Without regard to conflict of laws provisions. Both parties agree that any litigation or arbitration between the parties shall take place in Santa Clara County, California and both parties waive any objection to personal jurisdiction or venue in any forum located in that County.

**19. ATTORNEY'S FEES:** In any suit or action brought to enforce any term, condition or covenant of this acknowledgement or to recover damages arising from any breach of the acknowledgement, the losing party shall pay the prevailing party's reasonable attorneys' fees and all other costs and expenses which may be incurred by the prevailing party in any suit, action or any reviews or appeals therefrom.

