

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE ARE LIMITED TO THOSE CONTAINED HEREIN AND THOSE WITHIN THE PURCHASE ORDER. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY BUYER ("BUYER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY MAKING AN ORDER FOR PRODUCTS OR SERVICES FROM VITABYTE INC. ("SELLER") BUYER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS. THESE TERMS AND CONDITIONS CONTROL ALL FUTURE PURCHASES BY BUYER, EVEN IF BUYER DOES NOT SIGN A PURCHASE ORDER AT THE TIME OF SUCH SUBSEQUENT PURCHASE. IF BUYER AND SELLER SIGNED A SEPARATE AGREEMENT THAT AGREEMENT SHALL CONTROL ONLY WITH RESPECT TO THE PRODUCTS PURCHASED THEREUNDER. ALL NEW PRODUCT PURCHASED FROM SELLER SHALL BE GOVERNED BY THESE TERMS AND CONDITIONS.

1. These Terms and Conditions constitute a binding contract between BUYER and SELLER (as defined in the Purchase Order) and are referred to herein as either "Terms and Conditions" or this "Agreement". BUYER accepts these Terms and Conditions by placing an order with SELLER through a Purchase Order.
 2. The Upfront Payment amounts listed in the Purchase Order is a non-refundable payment as reasonable reimbursement for consultation services, site evaluation, system presentation, order processing, installation of equipment and custom programming and BUYER expressly consent thereto.
 3. **Purchase Price:** BUYER agrees to pay SELLER the price for the Products, including any required down payment, in the amount and in accordance with the payment terms set forth in the Purchase Order. Software License Fees shall be paid monthly by ACH draft or Bank Card draft. Software License Fees may vary depending on number of users, sites or system configuration. Any change in the number of users, sites or system configurations must be requested to SELLER not less than 30 days before such change and may require the payment of additional Software License Fees. SELLER may in its discretion provide updates for the Hardware or Software at no additional charge in conjunction with selected Services, or charge an additional fee for such updates.
 4. **Taxes:** All prices and charges for Products provided hereunder are exclusive of any taxes applicable to the transaction, such as value added taxes, sales or use taxes, duties, or other taxes or levies imposed by any government, public authority, or government agency on BUYER's purchase of the Products hereunder, all of which are the responsibility of BUYER to pay, provided, for avoidance of doubt, that BUYER shall not be responsible for payment of any taxes based on the income, property or employment of employees by SELLER. In the event SELLER is ever assessed or threatened to be assessed taxes, fees, levies, penalties and/or fines regarding BUYER's failure to pay any taxes applicable to the transaction, BUYER authorizes SELLER to submit an AUTOPAY draft for the amount claimed due from BUYER.
 5. **Cancellation/Return Policy:** ***IN NO EVENT WILL RETURNS BE ALLOWED FOR PRINTERS, COMPUTERS, TERMINALS, MONITORS, CASHDRAWERS OR ANY HARDWARE PERIPHERALS SOLD TO BUYER. BUYER ACKNOWLEDGES UPON EXECUTION OF THE PURCHASE ORDER SELLER PURCHASES PRINTERS, COMPUTERS, TERMINALS, MONITORS, CASHDRAWERS OR ANY HARDWARE PERIPHERALS FROM THIRD PARTIES AND SUCH EQUIPMENT IS REGISTERED IN BUYER'S NAME AND THEREFORE NON-REFUNDABLE.***
 - a) **Cancellation.** In the event BUYER cancels BUYER's order prior to delivery of the Products SELLER will refund to BUYER within ninety days the amount of BUYER's deposit LESS expenses incurred by SELLER on this project the reasons provided in this Section.
 - b) **Hardware Returns.** Subject to SELLER's approval, BUYER may return Hardware (not including **PRINTERS, COMPUTERS, TERMINALS, MONITORS, CASHDRAWERS OR ANY HARDWARE PERIPHERALS**), if BUYER notifies SELLER in writing of such desire to return within 30 days of the date of delivery of the Products. In the event SELLER accepts BUYER's request for return and BUYER returns the Hardware to SELLER in new condition, SELLER shall provide BUYER a credit of the original purchase price on SELLER's account that BUYER may use for purchase of any other available Products requested by BUYER. In the event BUYER returns the Hardware to SELLER in less than new condition, SELLER will determine, at SELLER's sole discretion, whether to accept and what credit shall be given for the return. If SELLER does not accept the return BUYER shall have no claim against SELLER.
 - c) **Software Returns:** Software License Fees, Labor and Services. NO REFUND WILL BE GIVEN FOR ANY software provided BUYER or prepaid software license fees or labor provided, expended or committed to BUYER. BUYER shall have no claim against SELLER for any other refunds or damages.
- BUYER ACKNOWLEDGES THAT PRIOR TO DELIVERY OF THE PRODUCTS, SELLER EXPENDS SUBSTANTIAL AMOUNT OF TIME AND MONEY IN THE CONFIGURATION OF THE PRODUCTS ORDERED FOR BUYER, which includes but is not limited to purchasing equipment, configuring the Software for BUYER's specific use, converting BUYER's data to make it compatible with the Products, and establishing communication with BUYER's suppliers and bank card processing vendors to configure and test the Products. AS SUCH BUYER AGREES THE TERMS OF THIS CANCELLATION/RETURN POLICY ARE REASONABLE.
6. **Delivery Date:** SELLER shall ship products to BUYER FOUR WEEKS FROM RECEIPT OF THE PURCHASE ORDER AND PAYMENT OF THE PURCHASE PRICE SPECIFIED IN THE PURCHASE ORDER IS MADE. BUYER understands that all Hardware purchases must be paid in full prior to shipment of the Hardware to BUYER. On-site work (if any is contracted for) will follow BUYER'S receipt of Hardware components

by approximately two weeks and must be paid in full two weeks prior to SELLER scheduling such work. Either party may notify the other of complications arising with these dates and will at that time reschedule. Exact delivery time cannot be guaranteed.

7. Grant of Software License:

a) Term: This is a month to month license. Payment of the License Subscription Fee is due in advance of each month. SELLER's receipt of such payment grants BUYER an additional one-month term of the license. When the balance of prepaid License Subscription Fee are exhausted, BUYER's software license term will automatically expire and the Software will cease to function for BUYER and any data stored by this Software will be unavailable to BUYER. BUYER may terminate the license by giving SELLER 30 days written notice via electronic mail to the address of billing@vitabyte.com. SELLER will acknowledge receipt of termination request via return electronic mail to BUYER. SELLER may terminate this license at any time if BUYER fails to comply with any of the terms of this Agreement or for SELLER's convenience upon 30 days written notice to BUYER. Within five (5) days after termination of the Agreement, BUYER will return to SELLER the Software and all copies thereof (including, without limitation, partial copies or modifications), and supporting documentation in BUYER's possession or control.

b) Deactivation: Upon termination of this Agreement, SELLER may interfere with, suspend, or terminate BUYER's use of and access to the Software at no liability to SELLER.

c) Use: This license authorizes BUYER to use the Software only for BUYER's own use on a single computer system at the installation address designated in the Purchase Order or such other location to which BUYER may relocate in the future provided that BUYER shall give SELLER prompt written notice of the address change. SELLER will not be responsible for, and will not provide support for Software which has been modified by the BUYER in any manner other than authorized tailoring to the single computer system as explained in the supporting documentation of the Software.

d) Updates: SELLER may advise BUYER of enhancements and updates to Software. BUYER may obtain such updates or enhancements, as they become available upon terms and for the amounts then in effect as set by SELLER. SELLER may, at its sole discretion, provide enhancements and upgrades free of charge. All enhancements and updates to the Software provided by SELLER are subject to the terms of this Agreement.

e) Copies: BUYER shall NOT COPY THE Software FOR ANY PURPOSE. BUYER shall not use or obtain any Software that has been copied, purchased or obtained from any other means, person or entity other than a SELLER.

f) Transfer. BUYER may not rent, lease, lend or sublicense the Software.

g) Proprietary Rights: BUYER recognizes and acknowledges that the Software (including, without limitation, the computer program and user manual, together with all copies, enhanced versions or updates thereof) are and shall remain the property of the third-party Vendor. BUYER acknowledges and agrees the ideas and expressions contained in the Software and user manuals, and the nonpublic information disclosed to BUYER in the course of the Services are confidential proprietary information and trade secrets of the third-party Vendor ("Confidential Information"). BUYER agrees to hold the Confidential Information in confidence and agrees not to transfer, dispose of, publish, display, disclose or otherwise make available in any fashion the Confidential Information. BUYER is responsible for and agrees to pay SELLER for any damages or losses due to the unauthorized copying or disclosure of the Software. BUYER recognizes that unauthorized copying or disclosure of the Software will cause irreparable injury to SELLER and that SELLER shall be entitled to, among other things, enjoin BUYER from any such activities.

h) Notices: All applicable rights in patents, copyrights, trademarks and trade secrets in the Software are and will remain with third-party software Vendor. In order to protect trademark, trade name, trade secret and copyright or patent rights of third-party Vendors in the Software, BUYER agrees not to remove, change or tamper with any notices on any Software product.

8. Limited Hardware Warranty: SELLER WARRANTS THAT DURING THE FIRST SIXTY DAYS FOLLOWING SHIPMENT OF THE HARDWARE TO BUYER, THE HARDWARE WILL BE FREE OF DEFECTS IN MATERIALS AND WORKMANSHIP ("HARDWARE WARRANTY PERIOD"). BUYER acknowledge that BUYER's selection of any particular Hardware is based on BUYER's own evaluation of the requirements of BUYER's business and BUYER's evaluation of the functions, capacities and specifications of the Products selected. SELLER does not warrant that the Products will meet all or any of BUYER's requirements or any requirements imposed by BUYER

9. Hardware Support: If the Hardware is discovered to contain a defect in materials or workmanship during the Hardware Warranty Period SELLER will provide Hardware repair/replacement service support on any Hardware supplied by SELLER which failed during normal use. During this Hardware Warranty Period BUYER shall not be responsible for the cost of labor and parts in the repair/replacement of such Hardware. BUYER will be responsible for the cost of shipping and other out of pocket expenses made by SELLER. This support is limited to assistance in the repair or replacement of only Hardware provided by SELLER. This provision does not cover damage resulting from acts of God, flood, lightning, malicious software, BUYER'S negligence, alterations, mishandling, BUYER's improper installation, or BUYER's failure to protect such Hardware. SELLER shall have the sole discretion to either repair the Hardware or replace it. In the course of providing such support, SELLER may use new or serviceable parts that are equivalent to new in performance. SELLER will ship replacement or loaner Hardware as promptly as such Hardware is available and will expedite repairs on failed Hardware so as to minimize downtime for BUYER. However, in no event will SELLER be liable for loss of business, profits or any other damages to BUYER during the time it takes SELLER to repair or replace the Hardware. The foregoing is BUYER'S sole remedy for Hardware failures supplied by SELLER in the first twelve months following deliver. Notwithstanding anything above SELLER will not be obligated to initiate or perform and Hardware repair/replacement service support if any license granted to BUYER by SELLER has been suspended, terminated, canceled or is otherwise impaired or if BUYER is in breach of any provision of these Terms and Provision. Following the Hardware Warranty Period SELLER, at SELLER's discretion may provide

hardware repair support to BUYER for the duration of the license granted by SELLER at a fee determined solely by SELLER. In no event however, will SELLER be required to replace any Hardware after the end of the Hardware Warranty Period. However, in no event will SELLER be liable for loss of business, profits or any other damages to BUYER during the time it takes SELLER to repair or replace the Hardware. No warranty will be provided for hardware installed by supplier other than Seller.

10. **Limited Software Warranty:** The Software is provided to BUYER with a limited warranty as set forth herein. Subject to Section 11 of this Agreement, Seller Operating System Software shall be warranted according to Licensing Contract provided by Microsoft Corp. Point of Sale software or any third-party software is not warranted by Seller to be free of defects and errors and is provided on "as is" basis. Seller shall not be responsible for possible direct/and indirect damages or losses by Buyer or third parties, caused by hardware and/or software use, misuse or failures. Seller will take all reasonable efforts to notify respective software manufacturers of any defects in their software. No warranty will be provided for software installed by supplier other than Seller.

BUYER AGREES THAT A PERCEIVED LACK OF FEATURES AND/OR DISSATISFACTION WITH PROGRAM FLOW, FUNCTION, SPEED AND/OR PROCEDURES WITH THE SOFTWARE DOES NOT CONSTITUTE AN ERROR AND ARE NORMAL CHARACTERISTICS OF SOFTWARE. BUYER ACCEPTS COMPLETE LIABILITY FOR DATA LOSS OR DISTORTION FROM ANY AND ALL MEANS. SOFTWARE IS WITHOUT WARRANTY OF ANY KIND FOR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT GUARANTEE CONTINUED ELECTRONIC COMMUNICATION ABILITY WITH VENDORS AS VENDOR'S COMMUNICATION SPECIFICATIONS MAY CHANGE OR BE REVOKED BY VENDORS.

11. **Support:** SELLER will provide software support via telephone and Internet remote connection on first come; first served basis provided BUYER'S License Subscription Fee is current. Support technicians are typically available 9:00 AM to 5:00 PM Eastern Time zone Monday through Friday (except holidays). After hours and weekend emergency support plans are available for additional monthly cost. SELLER has no obligation to provide support for software other than that is manufactured by SELLER and DOES NOT provide support on issues related to or stemming from computer viruses, spy-ware, Windows updates and/or ad-ware.

- a) **Equipment and software to be supported:** according the list in Purchase Order
- b) **Software re-installation:** as necessary.
- c) **Emergency support** is available on weekends and from 5pm to 9am on business days. The emergency nature of the call will be decided at sole discretion of assisting technician
- d) **Onsite Support:** Additional Charges may apply.
- e) Supplies to be purchased by BUYER at the separate fee and can be added to ACH or Credit Card Payments for Service without prior notification to BUYER
- f) Upgrades of POS and expansion of POS to be performed at the separate fee due by BUYER to SELLER and the sum of the Purchase Order to be reiterated accordingly by mutual agreement of parties.
- g) **Software costs, Hardware costs, labor cost or any other fee in conjunction of a request by the BUYER oral or not may be billed accordingly and Charges may be applied to the AUTOPAY Account without notice to the BUYER.**

12. **Limitations on Hardware and Software Warranty:** SELLER does not warrant that BUYER's operation of the Hardware or Software will be uninterrupted or error free. BUYER assumes the responsibility to take adequate precautions against damages to BUYER's operation that could be caused by such interruptions or errors. In addition to the limitations described in other Sections of this Agreement, the limited Hardware and Software Warranty will not apply to Hardware or Software that has (i) been serviced, modified, repaired or altered by anyone other than SELLER, (ii) has not been installed or maintained by BUYER or a third party in accordance with SELLER's requirements, and (iii) has been subjected to electrical stress, power fluctuations, improper or unauthorized use or negligence, acts of God or malicious software.

13. **Back-up Subscription:** BUYER may, at an additional monthly fee add any one or more additional available back-up subscriptions from SELLER. SELLER makes no representation or warranties that the operation of the backup will be uninterrupted or error free. SELLER shall not be liable to BUYER for any loss of BUYER's content or data for any reason that may be related to such back-ups.

14. **Limitation of Liability:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER, SELLER'S SHAREHOLDERS, EMPLOYEES/AGENTS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, THE FAILURE TO PROVIDE SUPPORT SERVICES, OR UNDER OR IN CONNECTION WITH ANY PROVISION OF THESE TERMS AND CONDITIONS, EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF SELLER, SELLER'S SHAREHOLDERS, EMPLOYEES/AGENTS OR ANY SUPPLIER, AND EVEN IF SELLER, SELLER'S SHAREHOLDERS, EMPLOYEE/AGENTS OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL OUR LIABILITY IN CONNECTION WITH THIS AGREEMENT EXCEED THE AGGREGATE AMOUNT BUYER ACTUALLY PAID SELLER UNDER THE TERMS OF THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM AGAINST US.

15. **Future Expansion:** Any Products requested by BUYER in the future will be based on prices in effect at that time.

- 16. Training / Unwarranted Repair:** If SELLER is requested to train and/or tutor employees (beyond SELLER'S standard initial demonstration of functionality), BUYER shall pay for these services based on prices of SELLER in effect at that time. If SELLER is requested to repair Hardware or Software that is not covered under the warranties provided in this Agreement BUYER shall pay for these services based on prices of SELLER in effect at that time.
- 17. AUTOMATIC PAYMENT & ELECTRONIC FUND'S TRANSFER:**
- a) SELLER will automatically debit BUYER's contracted monthly License Subscription Fees on or about the last week of each month for the following month's license. All other purchases will be detailed on an invoice electronically mailed to BUYER and will detail the amount that was debited.
 - b) BUYER shall review each statement for BUYER's AUTOPAY account. If BUYER believes an incorrect charge has been incurred, BUYER must notify SELLER of such disputed charges within fifteen days of the first statement on which the charge first appears or BUYER waives BUYER's right to dispute the charge. If BUYER informs SELLER that an error exists on BUYER's statement, SELLER will attempt to correct that error prior to BUYER's next statement.
 - c) BUYER may hold up or stop an electronic fund transfer provided BUYER gives SELLER notice of at least three business days before the scheduled transfer date and provides SELLER with an acceptable alternative form of AUTOPAY. SELLER shall bear no liability or responsibility for any losses of any kind that BUYER may incur as a result of any delay in the actual date on which BUYER's account is debited.
 - d) If any changes occur in the information on BUYER's AUTOPAY application, BUYER must immediately notify SELLER in writing of such changes. If BUYER either does not notify SELLER in writing of such changes or does so in an untimely fashion SELLER shall bear no liability or responsibility for any losses incurred to the extent permitted by law. SELLER'S sole liability to BUYER shall be SELLER'S obligation to make any appropriate changes once in receipt of BUYER's written notification. The actual settlement date (date funds are transferred from BUYER's checking or savings account or charged to BUYER's credit card) will be the due date of BUYER's bill.
 - e) SELLER reserves the right to change these conditions at any time. Notice may be given on or with BUYER's bill or by other methods. Either party may terminate this agreement at any time by giving the other party written notice reasonably in advance of the next scheduled settlement date. Termination shall not prevent a debit transaction authorized before any notice of termination. Termination will limit duration of Software Licenses granted to the period of time covered by pre-paid rents.
 - f) BUYER agrees to be bound by any rules BUYER's financial institution requires for pre-authorized electronic funds transfer. SELLER suggests that BUYER check with BUYER's financial institution to see if there are any fees associated with the pre-authorized payment option.
 - g) BUYER's Subscription License Fee AUTOPAY will begin the month before BUYER receives BUYER's Products because the Subscription License Fee is paid in advance of the month it's for. Should shipping of BUYER's new system be delayed past the 1st day of the Subscription month, SELLER will promptly refund the Software License Fee for the period of the 1st through BUYER's system ship date.
- 18. Notice of Commercial Product:** Notice of Commercial Product: The goods and services provided by SELLER to BUYER under this Agreement are not consumer products and are therefore not governed by consumer product laws.
- 19. Non-Applicability of HIPAA:** Products supplied by SELLER include a retail point of sale system explicitly designed and intended to be used in a manner that does not utilize or disclose any Protected Health Information ("PHI") nor fall under the requirements of the Health Insurance Portability and Accountability Act ("HIPAA"). Under HIPAA organizations that utilize PHI are required to complete a Business Associate Agreement with those Business Associates that meet the HIPAA definition. SELLER does not perform the functions of a defined Business Associate, nor does it have PHI data and as such, is exempt from the Business Associate Agreement requirement. Any and all PHI that BUYER has access to or control of must be maintained outside of SELLER's products. Should BUYER or any user of SELLER's products have occasion to enter, maintain, disclose or transmit any PHI data to SELLER through use of SELLER's products, BUYER shall determine any necessary steps to meet compliance with HIPAA rules and be responsible for the same. SELLER is happy to assist BUYER and its users with keeping SELLER and the data contained within its products out of the scope of HIPAA and PHI. If issues arise related to HIPAA compliance, BUYER is to contact SELLER's customer service to seek training for the same.
- 20. Metadata and Data Warehousing:** As an additional condition of use by BUYER of SELLER's goods and services, BUYER acknowledges and agrees that SELLER may collect and warehouse electronic data and other information relating to BUYER's purchases and sales through BUYER's use of SELLER's software. The purpose of collecting this data is to compile real time information about sales, retail pricing and customer purchasing trends within specific geographic boundaries to drive business intelligence dashboards of how BUYER's business compares to the group. BUYER agrees SELLER may share this information with BUYER and other customers of SELLER provided SELLER does not disclose identification of BUYER or BUYER's customers and vendors, including but not limited to names, addresses and phone numbers to anyone other than BUYER's supplier(s).
- 21. EXCLUSIVE PROCESSING REQUIREMENT**
- a) **SELLER's Processing Services.** BUYER's use of the Equipment requires exclusive use of SELLER's Processing Services at all-times. BUYER agrees not to use credit, debit, electronic payment, or gift card processing services from any provider except SELLER's. By entering into this contract, and as a condition precedent to SELLER providing Equipment to BUYER, BUYER agrees to enter into a Merchant Transaction Processing Agreement. The Processing Agreement consists of the Merchant Application and the Terms and Conditions, together with its addenda, reference documents, attachments and schedules.
 - b) **Failure to Process with SELLER** If at any time after the Install Date BUYER stops using SELLER's Processing Services, in whole or in part, then SELLER shall charge merchant \$75.00 per Equipment terminal for each 30-day period that SELLER's Processing Services are not

used ("Inactivity Fee"). The Inactivity Fee is in addition to any other fees or charges. Notwithstanding the foregoing, SELLER reserves the right to terminate this Service Agreement or suspend Merchant's access to the POS for Merchants intentional non-use of SELLER's Processing Services.

22. **Title, ownership and right to possession** of the equipment listed on this Contract shall remain with SELLER until all sums due under this Contract are paid. This document is a Security Agreement allowing us to file a UCC-1 financing statement if any moneys are still owed after installation. If payment is not made when due, or on other breach by BUYER, SELLER has the right to enter or to dial into any premises where the equipment is located and take possession of or disable the equipment without demand and without the necessity of resorting to legal process. BUYER's signature in Purchase Order expressly grants permission to SELLER personnel or agents for such entry or disablement and BUYER agree not to interfere with and to cooperate in such removal and to pay for all reasonable expenses, including legal fees.
23. Upon breach of payment or of other terms, BUYER also agree to pay, a reasonable equipment rental fee for the equipment during its use and all expenses which have been incurred by VITABYTE including, but not limited to, attorneys' fees, court costs, training and installation expenses and removal expenses BUYER shall also pay to VITABYTE interest at a rate of 1.5% per month on any unpaid balances that are 30 days overdue.
24. SELLER is not liable for any delay in delivery or failure to deliver caused by unavailability of materials, strike or other labor related difficulties, interruption of production for mechanical or technical reasons, government or court order, BUYER's failure to pay in accordance with this agreement, or force majeure.
25. All claims for shortage or for damage occurring prior to delivery shall be deemed waived unless made in writing and delivered to SELLER within ten days of delivery of the equipment to BUYER. All risk of loss or damage to equipment after delivery from any cause whatsoever shall be borne by BUYER.
26. The installation prices listed on the Purchase Order are only an estimate for initial programming and training of personnel in the use and operation of the equipment BUYER will be invoiced for the actual installation hours SELLER and BUYER agree that SELLER's sole obligation for training is to supply a qualified instructor for the designated number of training hours. SELLER neither warrants nor represents that after such training time any particular individual designated by BUYER shall be able to competently use and operate the equipment. For any additional training, SELLER will bill BUYER at its then prevailing rates, which do not include standard travel and room and board. All such expenses shall be promptly paid by BUYER upon presentation of receipts and invoices.
27. The prices listed on the Purchase Order include installation of the equipment, except that it is expressly understood that installation of sufficient and requisite AC power lines and data communications cabling is BUYER's sole responsibility. BUYER represent to SELLER that such lines are sufficient and requisite for the particular installation. BUYER acknowledge receipt of documentation concerning the requirements for dedicated, isolated and insulated AC power lines and for data communications cabling for all SELLER's equipment. SELLER shall not be responsible for the inspection of such electrical installation and/or cabling. BUYER acknowledge and agree that any SELLER's warranty or liability under this Contract is conditional upon BUYER providing those conditions contained in SELLER' written specifications. The prices and quantities listed include only those items specified in the equipment list and any other attached documents.
28. **THIS AND THE ABOVE IS THE ONLY WARRANTY MADE AS TO THIS INSTALLATION AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER'S SOLE OBLIGATION UNDER THIS WARRANTY IS LIMITED TO THE REPAIR OR REPLACEMENT OF THE EQUIPMENT OR ITS PARTS. IN NO EVENT SHALL SELLER OR ITS EMPLOYEES BE LIABLE FOR ANY LOSS OF PROFITS, OPPORTUNITY, LOSS OF USE OR OTHER DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING THOSE ASSOCIATED WITH IMPROPER, UNDERCALCULATED OR UNDER-ACCRUED TAXES OR GOVERNMENT LEVIES. SELLER IS NOT RESPONSIBLE FOR AND DISCLAIMS ANY LIABILITY ASSOCIATED WITH FAILURE TO PROCESS CREDIT CARD TRANSACTIONS AND FOR ANY AND ALL PCI/DSS/PABP COMPLIANCY VIOLATIONS, FINES, JUDGMENTS OR PENALTIES ASSESSED AGAINST BUYER. BUYER ACKNOWLEDGES THAT THE SOFTWARE PURCHASED HEREIN IS SUBJECT TO THE TERMS CONDITIONS AND LIMITATIONS CONTAINED IN THE SOFTWARE MANUFACTURERS' LICENSING AGREEMENTS, WHICH ARE NOT TRANSFERABLE NOR ASSIGNABLE. WARRANTY IS VOID IF BUYER ARE ON "NO SERVICE" STATUS FOR NON-PAYMENT.**
29. Warranty coverage will not be extended for repairs made necessary by damage due to fire, water, wind, rain, storm, lightning, blackout, burglary, power line fluctuations, spillage, accident, negligence, abuse, acts of God, acts of terror or the installation or downloading by BUYER, BUYER's licensees, employees, agents, or 3rd parties of software of any kind. The warranty specifically excludes damage to the printer heads or motors caused by paper jams or insertion of foreign objects between the printer head and the print surface. Any repairs resulting from such causes will be performed at additional charge to BUYER only after BUYER's prior written approval of estimated costs to repair. SELLER assumes no responsibility for the repair or maintenance of any type of communication lines or related equipment, which may be required for SELLER to provide remote support. SELLER reserves the right to bill BUYER for on-site service calls made necessary as a result of communication line or equipment malfunctions which prevent SELLER from using remote support software.
30. This Contract constitutes the entire Contract between BUYER (YOU) and SELLER and may not be amended except in writing signed both by BUYER and by SELLER. BUYER expressly represent to SELLER that no officer, employee, representative or agent of SELLER has made or entered into any oral agreement, promise, representation or understanding that conflicts with any of the terms set forth in writing in any counterpart of this Contract.
31. This Contract shall be governed by and construed according to the UCC and the laws of New York and all actions shall be brought within Queens County, N.Y.
32. This Contract shall be binding upon and inure to BUYER's benefit and to the benefit of SELLER and / or to the benefit of all successors and assigns. It is understood that understood that SELLER may subcontract certain of its obligations under this Contract. This Contract is not otherwise assignable without the written prior consent of consent of the other party.

33. The invalidity or unenforceability of any provision of this Contract shall not render any other portion of the Contract invalid or unenforceable.
34. SELLER has the right to terminate this Contract, or to delay shipment pursuant thereto, by reason of the filing of Bankruptcy or insolvency proceedings against BUYER, BUYER, breach by BUYER of any of the terms of this Contract and BUYER's failure to make payments in accordance with the payment schedule, if any, set forth elsewhere in right to terminate this contract in the event of BUYER's assignment of this Contract without advance written approval by SELLER.
35. BUYER agree not to solicit nor hire any current, past or former employee of Vitabyte or to hire such person for a period of at least three (3) years from the date hereof or date of such employee or person leaves the employer, whichever is later. Should BUYER do so, BUYER agree to pay to SELLER. a sum equal to TWO (2) year's salary of that employee as liquidated damages for breach of this covenant.
36. **Miscellaneous:**
- a) **Assignment.** BUYER may not assign any of the rights, interests, or obligations under this Agreement without the prior written consent of SELLER.
 - b) **Notices.** BUYER consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet; individual BUYERS may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting SELLER. In addition, Internet connectivity requires access services from an Internet access provider. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.
 - c) **Time of Essence.** Time is of the essence with respect to all dates and time periods set forth or referred to in this Agreement.
 - d) **Attorney Fees.** If SELLER has to retain an attorney to interpret or enforce the provisions of this Agreement, to rescind this Agreement, or otherwise with respect to the subject matter of this Agreement, even if an arbitration, suit, or action is not instituted, the SELLER will be entitled to recover from BUYER with respect to such issue, in addition to costs, reasonable attorney fees incurred in the consultation, preparation, prosecution, or defense of such issue.
 - e) **Entire Agreement.** These Terms and Conditions, together with the Purchase Order (and including the documents and instruments referred to in this Agreement) and any modifications as set forth below constitute the complete and exclusive agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes all prior understandings and agreements, whether written or oral, among the parties with respect to such subject matter. This Agreement may not be explained or supplemented by any prior course of dealings or trade by custom or usage.
 - f) **Modification.** SELLER reserves the right to make changes to these Terms and Conditions at any time upon 30 days written notice to BUYER. Upon such change BUYER shall have the right to terminate this Agreement. Any use of the products or services by BUYER after 30 days or after such notice shall be deemed to constitute acceptance by BUYER of such modifications.
 - g) **Severability:** If any provision contained in this Agreement is or becomes invalid, illegal or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of this Agreement, and the invalid, illegal, or unenforceable provision shall be deemed modified so as to have the most similar result that is valid and enforceable under Oregon law.
 - h) **Survival:** Section 2., 4.Taxes, 7b)., Deactivation, 7e)., Copies, 7f)., Transfer, 7g)., Proprietary Rights, 7h)., Notices, 8.Limited Hardware Warranty, 10. Limited Software Warranty,12. Limitations on Software and Hardware Warranty, 14.Limitation of Liability, 18. Notice of Commercial Product, 22. Title-Ownership and right to Possession, Section 28, Section 29, and 36. Miscellaneous shall survive the termination of this Agreement for any reason.

37. **Definitions:**

"Hardware" means the tangible equipment supplied by SELLER to BUYER in accordance with the Purchase Order.

"Products" mean Hardware, Software and related services provided by SELLER. "Purchase Order" means a request by BUYER for the license and purchase of Products that is accepted by SELLER.

"Services" means labor provided to BUYER, in configuring and setting up Products from BUYER and additional service described in the Purchase Order or this Agreement.

"Software" means the programs, data and related manuals supplied by SELLER to BUYER in accordance with the Purchase Order.

"Subscription License Fee" means the monthly fee payable to SELLER for the license to use the Software in accordance with this Agreement.

"Processing Services" means the Credit Card Processing Agreement from a third-party vendor by SELLER's desecration provided to BUYER, in providing the ability to the BUYER to accept Credit Card payments from his merchants.

ENTIRE CONTRACT. SELLER'S REPRESENTATIVES MAY HAVE MADE ORAL STATEMENTS REGARDING THE EQUIPMENT, SOFTWARE, OR SERVICES. NONE OF THE ORAL STATEMENTS CONSTITUTE WARRANTIES, BUYER SHALL NOT RELY ON ANY OF THEM, AND THEY ARE NOT PART OF THIS CONTRACT. THIS CONTRACT, INCLUDING ITS REFERENCE HEREIN DOCUMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PREVIOUS PROPOSALS, ORAL OR WRITTEN, AND ALL NEGOTIATIONS, CONVERSATIONS, OR DISCUSSIONS HERETOFORE HAD BETWEEN THE PARTIES RELATED TO THIS SERVICE AGREEMENT. BUYER ACKNOWLEDGES THAT IT HAS NOT BEEN INDUCED TO ENTER INTO THIS CONTRACT BY ANY REPRESENTATIONS OR STATEMENTS, ORAL OR WRITTEN, NOT EXPRESSLY CONTAINED IN THIS CONTRACT.

THE ABOVE LINE INDICATES THE END OF THIS PURCHASE ORDER'S TERMS & CONDITIONS