

Standard Terms and Conditions of Sale

GreenPeak Technologies B.V.

Standard Terms and Conditions of Sale

Version No. 9.0 – March 2009

As used herein "**GreenPeak**" means GreenPeak Technologies B.V, having its place of business at Catharijnesingel 30, 3511 GB Utrecht, The Netherlands, unless otherwise specified.

THE TERMS AND CONDITIONS SET FORTH BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN GREENPEAK AND CUSTOMER, UNLESS OTHERWISE AGREED TO IN WRITING BY GREENPEAK. IN THE EVENT THAT CUSTOMER ISSUES ANY FORM OF ORDER TO GREENPEAK AUTHORIZING THE PURCHASE OF PRODUCT(S) , IT IS AGREED THAT SUCH ORDER IS ISSUED EXCLUSIVELY FOR THE PURPOSE OF CONFIRMING CUSTOMER'S PURCHASE OF THE SPECIFIED ITEM(S) AND THE PRICE(S) THEREOF AND THAT NO OTHER TERMS AND CONDITIONS SPECIFIED OR PREPRINTED ON SUCH ORDER SHALL ADD TO OR MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND/OR ANY RELATED DOCUMENTATION PROVIDED WITH THE ITEMS PURCHASED, NOR SHALL SUCH ORDER TERMS AND CONDITIONS AFFECT EITHER PARTY'S RESPONSIBILITY TO THE OTHER PARTY AS DEFINED HEREIN. A CUSTOMER PURCHASE ORDER SHALL CONSTITUTE ACCEPTANCE OF GREENPEAK'S OFFER AS SPECIFIED IN A VALID QUOTE. GREENPEAK RESERVES THE RIGHT TO REJECT ANY PURCHASE ORDER.

1. TERMINOLOGY

As used herein "**Quote**" means a price submitted formally to the Customer in writing for the sale of hardware and/or software and any associated installation, configuration or other services as described therein.

As used herein "**Customer**" means the purchaser of goods and/or services from GreenPeak identified in the Quote referencing this Standard Terms and Conditions of Sale document.

As used herein, "**Purchase Order**" means the written authorization to ship products at the Quoted price against the conditions stated in this document.

As used herein "**Product**" means any hardware, software, installation or maintenance service purchased and delivered to the Customer hereunder.

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As used herein, “**Expedited Delivery**” shall mean shipment to a Customer-designated location within a time frame that is sooner than the normal date of availability.

2. PRICES, DISCOUNTS AND QUOTATIONS

All prices are subject to change without notice prior to receipt of Customer's Purchase Order (hereinafter referred to as “Purchase Order”) and GreenPeak’s acceptance of it. All invoice prices are those in effect on date of shipment, unless otherwise agreed to by GreenPeak in writing. All pricing information in published or printed material is provided for general information and estimation purposes only. Published prices are neither quotations nor offers to sell. Prices do not include applicable national or local taxes and, unless expressly identified and itemized, do not include freight, handling or insurance. All taxes applicable to Products ordered shall be paid by Customer, or in lieu thereof, Customer shall provide GreenPeak with a tax exemption certificate acceptable to the taxing authorities.

3. PAYMENT TERMS

If Customer fails to make any payment when due, GreenPeak shall, without prior notice or default letter and without prejudice to any other right or remedy available to it, be entitled to: (1) Charge interest on any unpaid invoice, automatically and without any previous notice, at the rate calculated in accordance with article 5 paragraph 1 of the Act of August 2, 2002 on combating late payment in commercial transactions and/or (2) Suspend any further deliveries to Customer whether under the same contract or under any other contract between Customer and GreenPeak.

4. SHIPPING, DELIVERY, AND WAREHOUSING

Shipping and delivery

Customer shall be responsible for all freight, handling and insurance charges. GreenPeak shall select the carrier unless otherwise instructed by Customer. In no event shall GreenPeak have any liability in connection with shipment, nor shall the carrier be considered an agent of GreenPeak. GreenPeak shall not be liable for damage or penalty for delay in delivery or for failure to give notice of any delay.

Risk and property

Whatever the delivery or transfer methods agreed upon by the parties, the products will be delivered to the Customer Ex Works (EXW) Incoterms 2000.

Property of the products shall not pass to Customer until GreenPeak has received payment in full of the entire price including interest and any other possible amount due to it. Until property of the products passes to Customer, Customer shall keep the products separate from those of Customer and third parties. Until such time Customer shall not pledge or sell the products, nor shall it use them as a guarantee or other security.

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Partial shipments

Unless expressly specified otherwise in the applicable Quote, Customer shall accept and pay for partial shipments of goods GreenPeak

Purchase money security interest

GreenPeak retains a purchase money security interest in all hardware and such security interest is released when payment in full for such hardware is received by GreenPeak. Customer agrees to pay a warehousing fee equal to one and a half percent (1.5%) per month (or portion of a month) of the list price for any Product(s) purchased hereunder and held in a warehouse either at Customer's request or due to Customer's failure to accept delivery. Warehousing fees will be calculated from the date on which Products are delivered to the warehouse.

5. EXPEDITED DELIVERY

Customer may request expedited delivery of Products. If GreenPeak accepts such request GreenPeak will assess an expedited delivery fee equal to three percent (3%) of the unit list price for the Product(s) for which Expedited Delivery is requested, unless otherwise specified on the applicable Quote.

GreenPeak is under no obligation to agree to expedite delivery.

6. CANCELLATION OF ORDERS

Within 90 days before scheduling delivery of goods, Customer may not cancel or modify a Purchase Order without the written consent of GreenPeak. If GreenPeak consents to Customer's cancellation or modification of a Purchase Order, Customer agrees to be responsible for and pay GreenPeak all costs, expenses and fees incurred by GreenPeak

7. RETURN POLICY

No return shipment for items delivered to Customer will take place without prior written approval from GreenPeak. Such approval, when provided, must be in the form of a written Return Material Authorization (RMA), which must accompany the returned items. An RMA must be requested by Customer from GreenPeak within twenty (20) days from the original ship date. Items returned pursuant to the foregoing procedure may be subject to a restock fee, and customer shall assume and satisfy in full. Returned items must be in the original sealed shipping conditions, undamaged, unused and unaltered. Equipment received without an RMA and or in a condition other than described entitles GreenPeak the right to reject return of the items and/or may be subject to additional charges which Customer agrees to pay. Opened software is not returnable. All shipments of returned items must be shipped prepaid by Customer to the warehouse location specified in the RMA. Upon receipt of the returned items, GreenPeak will inspect such items for compliance with the foregoing conditions for proper return. A credit for properly returned items will be entered against the original invoice for the ordered items. All RMA's issued are valid for thirty (30) days from the date the RMA is issued after which time the RMA will be cancelled.

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8. EXPORTS

The ultimate shipment of potential orders solicited by Customer shall be subject to the right and ability of GreenPeak to make such sales and shipments under all policies, decrees, orders, laws, rules and regulations of the country of origin government and agencies and instrumentalities thereof in effect at the time of shipment of the Purchase Order, or which may be in effect thereafter, which govern exports or otherwise pertain to export controls.

Any order which has been accepted by GreenPeak but which cannot be fulfilled due to such policies, decrees, orders, laws, rules or regulations shall be considered to have been rejected when submitted to GreenPeak for acceptance or rejection. GreenPeak will inform Customer accordingly. Customer shall not transfer, directly or indirectly, any product or technical data received from GreenPeak or the direct product of such data, to any destination subject to export restrictions, unless prior written authorization is obtained from the appropriate government agency.

9. WARRANTY

GreenPeak warrants for period of 1 year that the Products are free from defects in material and workmanship. Subject to the conditions and limitations set forth below, GreenPeak will, at its option, either repair or replace any part of its Products that prove defective by reason of improper workmanship or materials. Repaired parts or replacement Products will be provided by GreenPeak on an exchange basis, and will be either new or refurbished to be functionally equivalent to new. If GreenPeak is unable to repair or replace the Product, it will refund the current value of the Product at the time the warranty claim is made. This limited warranty does not cover any damage to this Product that results from improper installation, accident, abuse, misuse, natural disaster, insufficient or excessive electrical supply, abnormal mechanical or environmental conditions, or any unauthorized disassembly, repair, or modification. This limited warranty also does not apply to any Product on which the original identification information has been altered, obliterated or removed, has not been handled or packaged correctly, has been sold as second-hand or has been resold contrary to export regulations.

Customer shall be unable to invoke any hidden defects unless he has notified GreenPeak by registered letter of hidden defects within thirty (30) business days following discovery and no later than twelve (12) months following receipt of the products by Customer which, unless otherwise determined in writing, is accepted to have taken place on the day of the shipment of the Product towards Customer. Any claim for non-conformity, apparent defects or hidden defects that is not made within the timeframe set forth herein shall be void. No claim shall be allowed by any other party than Customer.

10. SOFTWARE

Any software provided under these terms is subject to the license terms that are provided with it.

11. DEFENCE OF INFRINGEMENT CLAIMS

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If a third party files a claim or brings an action against Customer alleging that a Product, as delivered by GreenPeak to Customer infringes a patent, copyright, trademark or other intellectual property right and if GreenPeak is promptly advised of any such claim or action by Customer, then GreenPeak shall assume and have sole control of the defense of any such action or claim at its own expense, including the sole power and authority to negotiate any settlement or compromise and shall be responsible for any judgment or award issued in such action based on such infringement. If at any time use of the product is enjoined or is discontinued because of such action, GreenPeak shall at its sole option and expense either procure for Customer the right to continue using the Product, replace or modify the Product so that it becomes non-infringing or grant Customer a credit for the purchase price of the Product and accept its return. GreenPeak shall not have any liability or obligation under this paragraph if the infringement of a third party right is based in any way upon (i) the use of Products in combination with other components, equipment or software not furnished by GreenPeak, (ii) the use of a Product in practicing any process for which the Product's use was not intended, (iii) any Product which has been modified or altered, (iv) a manner in which the Product is used different from the manner for which the Product was intended and authorized even if GreenPeak had been advised of such use; or (v) GreenPeak's compliance with Customer's designs, specification or instructions. In no event shall GreenPeak's total liability to Customer under this section exceed the aggregate sum paid to GreenPeak by Customer over the preceding twelve (12) months for the infringing Products.

12. SUBSTITUTIONS AND MODIFICATIONS OF SPECIFICATIONS, GENERAL PRODUCT CHANGE AND OBSOLESCENCE, END OF LIFE NOTIFICATIONS

GreenPeak assumes the right to make substitutions and modifications in the specifications of any of the Products or parts thereof designed by GreenPeak provided such substitutions or modifications will not materially affect the performance of such Products. All general product change and obsolescence /end of life notifications for GreenPeak standard product offerings may be viewed at www.GreenPeak.com. It is Customer's responsibility to check the GreenPeak website for these notifications and Customer shall be deemed to have received notice of the notifications when they are posted on the GreenPeak website.

13. NO MODIFICATION OR REVERSE ENGINEERING

Customer agrees that it will not modify, adapt, alter, translate, or create derivative works from any of the products purchased under the Agreement or derive, attempt to derive or direct others to derive the source code of any software product or the physical structure or technical properties of any other Product purchased under the Agreement by reverse engineering, disassembly, decompilation or any other means .

14. USE IN SAFETY AND LIFE SUPPORT APPLICATIONS

THE PRODUCTS SOLD BY GREENPEAK TO CUSTOMER ARE NOT DESIGNED OR INTENDED FOR USE IN APPLICATIONS WHERE FAILURE CAN REASONABLY BE EXPECTED TO RESULT IN PERSONAL INJURY OR DEATH (INCLUDING, WITHOUT LIMITATION FOR NAVIGATION, WEAPONRY, AVIATION, NUCLEAR OR SAFETY EQUIPMENT, FOR SURGICAL IMPLANT, FOR RESCUE OF PERSONS OR TO SUPPORT, PROTECT OR SUSTAIN LIFE. CUSTOMER USES, MARKETS AND

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SELLS THE PRODUCTS FOR SUCH APPLICATIONS AT ITS SOLE RISK AND EXPENSE, AGREES TO INDEMNIFY AND HOLD GREENPEAK HARMLESS FROM ANY AND ALL DAMAGES, COSTS OR EXPENSES ARISING FROM ANY CLAIM OR ALLEGED CLAIM OR ACTION OF ANY THIRD PARTY BASED ON THE ACTUAL OR ALLEGED FAILURE OF A PRODUCT TO PERFORM SUCH APPLICATIONS AND AGREES THAT GREENPEAK TECHNOLOGIES' WARRANTY IN THE AGREEMENT DOES NOT EXTEND TO ANY SUCH APPLICATIONS. IF CUSTOMER WISHES TO INCLUDE GREENPEAK PRODUCTS IN SAFETY AND LIFE SUPPORT APPLICATIONS, GREENPEAK CAN ON A CASE BY CASE EVALUATION, APPROVE EXEPTION TO THE LIMITATION OF USE.

15. FORCE MAJEURE

GreenPeak shall not be liable for any loss or damage resulting from any delay in delivery or failure to give notice of delay when such delay is due to any cause or event beyond GreenPeak control, including, without limitations, acts of nature, acts of terrorism, unavailability of supplies or sources of energy, riots, wars, fires, strikes, labor difficulties, delays in transportation, delays in delivery or defaults by GreenPeak ' vendor or acts or omissions of Customer. In the event of delay due to any such cause, time for delivery shall be extended for a period of time equal to the duration of such delay and Customer shall not be entitled to refuse delivery or otherwise be relieved of any obligations as a result of the delay. If, as a result of any such cause, any scheduled delivery is delayed for period in excess of one-hundred-twenty (120) days, GreenPeak or Customer shall have the right by written notice to the other to cancel the order for the Products subject to the delayed delivery without further liability of any kind.

16. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANYTHING ELSE HEREIN ALL LIABILITY OF GREENPEAK S UNDER THE AGREEMENT OR OTHERWISE SHALL BE LIMITED TO THE MONEY PAID TO GREENPEAK UNDER THE AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. IN CASE OF DAMAGES RELATING TO ANY ALLEGEDLY DEFECTIVE OR INFRINGING PRODUCT UNDER ANY LEGAL OR EQUITABLE THEORY BE FURTHER LIMITED TO THE PURCHASE PRICE PAID BY CUSTOMER FOR SUCH PRODUCT. IN NO EVENT SHALL GREENPEAK BE LIABLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR LOST DATA OR ANY OTHER INDIRECT DAMAGES EVEN IF GREENPEAK HAS BEEN INFORMED OF THE POSSIBILITY THEREOF.

17. ASSIGNMENT.

The Agreement is not assignable by Customer and any attempt to assign any rights, duties or obligations arising hereunder shall be void.

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18. GOVERNING LAW.

Each transaction between Customer and GreenPeak made under the Agreement is governed by, and shall be construed solely in accordance with, the internal laws of the Netherlands. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement or any Purchase Order issued under the Agreement. Customer waives any defense to the validity or enforceability of the Agreement arising from any electronic submission of it to Customer. Customer acknowledges and agrees that it has the ability to access each URL referenced in any Quote.

19. WAIVERS.

All rights and remedies of GreenPeak hereunder shall be cumulative and may be exercised singularly or concurrently. In the event that either party shall on any occasion fail to perform any term herein and the other party shall not enforce that term, failure to such enforce on that occasion shall not prevent enforcement of any term on any other occasion.

20. ENTIRE AGREEMENT AND AMENDMENTS.

The terms and conditions herein constitute the entire agreement between the parties and supersede all previous communications, whether oral or written. Any changes to the Agreement may be made only upon mutual agreement of the parties in writing.

END OF DOCUMENT