

1. Scope. These Product Sale Terms (these "**Sale Terms**") govern any written offer (a "**Quote**") issued by Trace3, LLC, a California limited liability company ("**Trace3**") to sell third party hardware, software, support and/or maintenance (the "**Products**") to the client named in the Quote ("**Client**"). These Sale Terms do not apply to Client's purchase of professional services performed by Trace3. Trace3's professional services are subject to the *Professional Services Terms* available at [www.trace3.com/legal](http://www.trace3.com/legal).
2. Acknowledgment. CLIENT ACKNOWLEDGES AND AGREES THAT: (A) THE SIGNED QUOTE AND ANY WRITTEN ORDER TO PURCHASE THE PRODUCTS (A "**PURCHASE ORDER**") PROVIDED BY CLIENT TO TRACE3 IN RESPONSE TO SUCH QUOTE IS MADE SUBJECT TO THESE SALE TERMS; (B) THESE SALE TERMS WILL GOVERN THE RELATIONSHIP BETWEEN TRACE3 AND CLIENT AND PREVAIL NOTWITHSTANDING ANY VARIANCE OR CONFLICT WITH ANY TERMS CONTAINED IN ANY PURCHASE ORDER, STATEMENT OF WORK OR OTHER AGREEMENT OR INSTRUMENT SUBMITTED BY CLIENT TO TRACE3; (C) ANY PRE-PRINTED OR OTHER TERMS OR CONDITIONS INCLUDED WITH OR IN ANY OF THE DOCUMENTS REFERENCED IN ITEM (B) WILL HAVE NO EFFECT WHATSOEVER; (D) TRACE3 RESERVES THE RIGHT TO REJECT OR ACCEPT ANY PURCHASE ORDER SUBMITTED BY CLIENT, IN ITS SOLE DISCRETION; AND (E) TRACE3'S ACCEPTANCE OF ANY PURCHASE ORDER IS MADE SUBJECT TO CLIENT'S ACCEPTANCE OF THESE SALE TERMS.
3. Prices. Prices for Products will be as stated in the Quote. Quoted prices for Products are valid through the expiration date set forth on the applicable Quote; provided, pricing may be changed by Trace3 immediately upon notice in the event of price changes from the applicable Products distributor or manufacturer.
4. Invoicing; Payment Terms. Trace3 may invoice Client upon the shipment of Products (whether by Trace3 or the applicable Products distributor or manufacturer), including whole or partial orders. Trace3's invoices are due and payable within thirty (30) days of the date of the applicable invoice. Trace3 reserves the right to charge Client interest on any delinquent balance. This interest is computed on a daily basis for each day the payment is delinquent at the lesser of (x) 18% per year, or (y) the maximum rate permitted by law. Trace3 reserves the right to refuse shipment of Products to Client if any delinquent invoices are outstanding. Trace3 reserves the right to refuse payment terms if, in Trace3's sole discretion, such terms would create an unreasonable credit risk for Trace3. In such event, deliveries of Products to Client will be available only on a C.O.D. or cash-in-advance basis. No payment by Client or receipt by Trace3 of an amount lesser than the entire amount of an invoice will be deemed to be other than on account of the earliest due amount, nor will any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and Trace3 may accept such check or payment without prejudice to Trace3's right to recover the balance of any amount due or pursue any other remedy provided for in these Sale Terms. In connection with the foregoing, Trace3 will have the absolute right in its sole discretion to apply any payment received from Client to any account of Client then not current and due and delinquent. Payment via Visa, Mastercard, American Express, other credit card, virtual card (e.g., American Express BIP), or any card or program similar to any of the foregoing will be accepted only if preapproved by Trace3 in writing. Any such payments will be subject to a processing fee of at least 3% of the total fees paid via such payment method.
5. Standard Order Procedure. Products may be ordered by Client by (i) executing the applicable Trace3 Quote, or (ii) issuing Trace3 a Purchase Order referencing the applicable Trace3 Quote. Client acknowledges and agrees that in the event any Purchase Order fails to reference these Sale Terms, these Sale Terms will nevertheless govern the relationship between Trace3 and Client. Purchase Orders will be subject to written acceptance by Trace3 and delivery schedules will be established in accordance with Products availability and Client's credit status. If Client requires a Purchase Order to be provided to Trace3 to enable invoicing and Client fails to deliver a Purchase Order prior to shipment of the applicable Products (including electronic delivery, where applicable), Client's execution of the applicable Quote will constitute Client's approval for Trace3 to invoice Client. For purchases of multi-year subscriptions, Client must provide a Purchase Order for the total payable for the entire subscription term. If Client's procurement policy prohibits multi-year Purchase Orders, Client must provide an executed Quote in addition to the Purchase Order for the first year that includes acknowledgment of the remaining payment schedule to purchase; regardless of the Purchase Order form selected, multi-year subscriptions are non-cancelable and Client will be obligated to pay for the total value of the subscription term.

6. Change Requests, Cancellation and Rescheduling. A request by Client to change or modify a signed Quote or Purchase Order previously accepted by Trace3 must be provided in writing by Client and any such change or modification will be subject to written approval by Trace3. All requests to cancel Product orders and/or return Products must be pre-authorized by Trace3 in writing. Trace3 does not guarantee that purchased Products will be returnable or exchangeable or that re-stocking fees can or will be avoided. Client will be responsible for the payment of all re-stocking or return-related fees charged by the applicable Products distributor or manufacturer.

7. Delivery; Title & Risk of Loss. All Products are delivered F.O.B. Origin, freight and insurance prepaid and added. Risk of loss and damage to Products passes to Client upon delivery of the Products to the carrier at the shipping point. Client is responsible for all freight, insurance, and other shipping costs, which will be invoiced to Client by Trace3. Trace3 will use commercially reasonable efforts to deliver Products in accordance with Client's shipping instructions and on or before the delivery dates set forth in the applicable Purchase Order or Quote but shall not be liable for delays beyond its reasonable control, including distributor or manufacturer delays. Title to Products will pass to Client only once payment is received in full for such Products.

8. Taxes and Duties. Unless specifically itemized, quoted amounts do not include taxes or duties. If Trace3 is required to pay or collect any federal, state, local, value added, goods and services, or any other similar taxes or duties based on Products provided under these Sale Terms, then such taxes and/or duties shall be invoiced to Client; this requirement, however, shall not apply to taxes based on Trace3's income.

9. Exports. The Parties acknowledge that Products and/or related confidential information provided under these Sale Terms may be subject to U.S. and applicable foreign export laws and regulations. Each party will comply with all applicable U.S. and foreign export laws and regulations and anti-boycott laws.

10. Warranties. TRACE3 DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING ANY PRODUCTS. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT ITS USE OF PRODUCTS IS AT CLIENT'S SOLE RISK AND THAT PRODUCTS ARE RECOMMENDED AND/OR SUPPLIED BY TRACE3 "AS IS" AND WITHOUT WARRANTY OF ANY KIND FROM TRACE3, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. TRACE3 WILL USE COMMERCIALY REASONABLE EFFORTS TO ASSIST CLIENT IN INITIATING A WARRANTY CLAIM WITH THE APPLICABLE PRODUCTS DISTRIBUTOR OR MANUFACTURER.

11. Staged Product Orders. The following terms only apply to orders of Products where Client requests that such Products are shipped to Trace3 prior to delivery to Client ("**Staged Product Order**"). Where this section and the Sale Terms conflict, this section shall control with respect to Staged Product Orders.

- (i) Products sold under a Staged Product Order will be deemed accepted by Client upon Trace3's receipt of such Products;
- (ii) Title and risk of loss to Products sold under a Staged Product Order passes to Client upon Trace3's receipt of such Products;
- (iii) Client will pay Trace3 the staging fees set forth in the applicable Quote ("**Staging Fees**"). Staging Fees are nonrefundable;
- (iv) Trace3 may invoice Client for Products sold under a Staged Product Order (including applicable Staging Fees) upon shipment of such Products to Trace3, including whole or partial orders;
- (v) The location, manner and method in which Products are staged or handled shall be determined in Trace3's sole, reasonable discretion.
- (vi) Products shall be delivered to Client in accordance with the delivery schedule mutually agreed to by Client and Trace3. If no delivery schedule is established, Trace3 will ship Products to Client upon Client's

request Client is responsible for all freight, insurance, and other shipping costs, which will be invoiced to Client by Trace3.

- (vii) Upon Client's reasonable request, Trace3 shall provide Client with a report summarizing the quantity of Products delivered during the preceding reporting period, the remaining quantity and type of Products on hand, and any other information material to the Products, as determined by Trace3.

12. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER BASED IN CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY IN TORT) WILL TRACE3 BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFIT, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THESE SALE TERMS, AND/OR THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE OR INTERRUPTION OF PRODUCTS SOLD UNDER THESE SALE TERMS. NOTWITHSTANDING ANY OTHER PROVISION OF THESE SALE TERMS, TRACE3'S MAXIMUM LIABILITY FOR DAMAGES HEREUNDER WILL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCTS PURCHASED WHICH IS THE SUBJECT OF THE CLAIM FOR SUCH DAMAGES. THIS DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREUNDER FAILS. CLIENT HAS ACCEPTED THIS DISCLAIMER OF LIABILITY FOR DAMAGES AS PART OF A BARGAIN TO LOWER THE PRICE OF THE PRODUCTS AND UNDERSTANDS THAT THE PRICE OF THE PRODUCTS WOULD BE HIGHER IF TRACE3 WERE REQUIRED TO BEAR ADDITIONAL LIABILITY FOR DAMAGES.

13. Products Changes. Trace3 reserves the right to change, improve or add any new Products or discontinue offering any Products at any time.

14. Use of Products. Products purchased by Client from Trace3 shall be for Client's internal use only, unless otherwise approved in writing by Trace3 and the applicable Products distributor or manufacturer. Client shall not modify, reverse engineer, or disassemble Products in any way, except as expressly permitted by the terms of the license agreement for such Products. Products are sold subject to the terms and conditions provided on the applicable Quote or at time of delivery, including end-user subscription agreements or other end-user agreements (collectively, "**EULA**"). Trace3 is not a party to the EULA, which is solely between Client and the applicable licensor or manufacturer. Client agrees to comply with the terms of the applicable EULA and will hold Trace3 harmless from any claims or damages related to the EULA.

15. Force Majeure. Neither party shall be liable to the other for any loss, injury, delay or damage whatsoever suffered or incurred by the other party due to causes beyond such party's control, including but not limited to, acts of God, strikes or other labor disturbances or third parties, war, sabotage, and any other cause or causes, whether similar or dissimilar to those herein specified, which cannot be controlled by such party.

16. Governing Law; Venue. These Sale Terms will be construed in accordance with, and all disputes hereunder will be governed by, the laws of the State of California, without regard to principles of conflict of laws. Both parties agree that any action, suit or proceeding arising out of or relating to the Products or these Sale Terms will be initiated and prosecuted in the state and federal courts located in Orange County, California, and the parties irrevocably submit to the jurisdiction of any such court.

17. Attorney's Fees. In any action to enforce these Sale Terms, the prevailing party will be awarded all court costs and attorneys' fees incurred.

18. General. Trace3 is acting as an independent contractor and not as an employee or agent of Client. Each party agrees that there is no relationship of agency, partnership, joint venture, or employment between the parties, and that each has no authority hereunder to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of the other party. All notices given pursuant to these Sale Terms will be in writing and deemed given when (i) delivered by hand with written confirmation of receipt; or (ii) delivered by a nationally recognized overnight delivery service with package tracking. All notices to be provided by Client to Trace3 under these Sale Terms must always be accompanied by a copy of such notice delivered to Legal@trace3.com. If a provision of these Sale Terms is held by a court or other tribunal of

competent jurisdiction to be invalid or otherwise unenforceable, such provision shall be limited or eliminated to the maximum extent permitted by applicable law so that these Sale Terms shall otherwise remain in full force and effect and enforceable. No waiver of any term of these Sale Terms shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under these Sale Terms shall not constitute a waiver of such right or provision. Assignment of these Sale Terms is prohibited without the express written consent of both parties, except that each party reserves the right to assign these Sale Terms to the successor in a merger or acquisition of such party. These Sale Terms represent the entire agreement between the parties regarding the subject matter contained herein and supersede all other agreements between the parties regarding the subject matter hereof. Any changes to the terms and conditions in these Sale Terms must be set forth in a written agreement signed by each party.

---END OF PRODUCT SALE TERMS---