

## Terms and conditions of sale, service and technical support (for resellers)

Dell (China) Company Limited Terms and Conditions of Sale, Service and Technical Support ("Terms and Conditions")  
For Resellers in the People's Republic of China (exclude Hong Kong, Macao and Taiwan)

### 1. DEFINITIONS

**"Seller"** means Dell (China) Company Limited.

**"Buyer"** means the Seller designated party, who is identified in Seller's Quotation or Invoice and purchasing products and/or services from Seller, and resells the products and/or services to the third parties.

**"End User"** means the individual or entity that purchases products for the purpose of its own use.

**"Sales Contract"** means the contract in accordance with which Seller supplies products to Buyer, which shall include Dell's Terms and Conditions of Sale, Service and Technical Support (for Resellers) in addition to (a) a quotation made by Seller, accepted by Buyer and finally confirmed by Seller, or (b) an order made by Buyer and accepted by Seller. Sales Contract will be governed by the relevant agreements<sup>1</sup> (if applicable) which were signed by both parties and in which Buyer was designated as Seller's reseller.

### 2. FORMATION OF CONTRACT

2.1 A Sale Contract shall come into existence only when Seller has notified Buyer of Seller's acceptance of Buyer's order and such notification shall be by email or by other means as agreed to by the parties. Seller may choose not to accept any order due to shortage of supply, pricing or other error, incompatible configuration or for any other reasons, even if Buyer has made payment to Seller.

2.2 Buyer warrants that it will resell Seller's products only in accordance with relevant agreements<sup>2</sup> between it and Seller, which were signed by Buyer as Seller's designed reseller.

2.3 Any quotation from Seller, whether confirmed by Buyer or not, shall not constitute an offer but an invitation for offer by Seller. The quotation shall constitute an order from Buyer to Seller when returned in writing to Seller with Buyer's signature and/or legally authorized chop.

### 3. ORDERS, PRICE AND PAYMENT

3.1 The prices, payment terms and configurations of products and/or services are as expressly agreed in writing in the Sales Contract.

3.2 Unless credit terms have been expressly agreed by Seller, payment for the products or services shall be made in full before physical delivery of products or provision of services. If Buyer does not pay any due payments in accordance with stipulated payment terms, for each overdue day, a default penalty of 0.03% of the overdue amount shall be paid; the foregoing default penalty, together with the overdue amount, shall be consolidated and paid by Buyer upon Seller's urging of payment. Until Buyer fully discharges any outstanding amounts which are due and owing, Seller shall have discretion to withhold delivery of products and/or provision of services. Seller reserves the right to demand immediate payment for any products and/or services that have already been dispatched.

3.3 Unless otherwise agreed in writing by Buyer and Seller, Buyer shall make payments to Seller in accordance with the chronological order of transactions undertaken, and Seller shall have discretion to apply any amounts received from Buyer in satisfaction of any sums due and payable by Buyer (including outstanding accounts receivables).

### 4. SOFTWARE

Both parties confirm that all software provided is subject to the terms and conditions of the license agreement relating to that software. The warranty obligations of all software shall be determined in accordance with the license agreement that governs its use.

## **5. TITLE AND RISK**

Title to and risk in the products shall pass to Buyer upon delivery of the products to Buyer or its designated receiver.

## **6. DELIVERY**

6.1 Seller shall, in accordance with stipulations in the Sales Contract, deliver the products to a designated receiver ("Designated Receiver") at the place of delivery ("Place of Delivery").

6.2 The products shall be deemed to have been delivered to Buyer upon the products reaching the designated Place of Delivery and Buyer having signed for receipt (either the Designated Receiver signing for receipt, or in circumstances where the Designated Receiver is unable to sign for receipt, Seller may agree to Buyer's signed receipt pursuant to an enterprise chop or other legally authorized chop).

6.3 Seller may modify products and/or discontinue the production of products at any time without notice as part of Seller's policy of on-going product up-date and modification. Modified or updated products will have the functionality and performance of the products ordered. Buyer accepts that Seller's policy may result in differences between the specification of products delivered to Buyer and the specification of products ordered.

## **7. ACCEPTANCE OF PRODUCTS**

7.1 In the event that the purchase price includes first time installation of the products and the installation occurs within five days of delivery, the products shall be deemed as being accepted by Buyer upon Buyer's or End user's signature and/or chop on the "Customer Confirmation Letter" and "Installation Report". In the event that the purchase price includes first time installation of the products, but Buyer or End User does not arrange for the installation to occur within five days of delivery, the products shall be deemed as being accepted by Buyer on the sixth day after delivery.

7.2 In the event that the purchase price does not include first time installation of the products, the products shall be deemed as being accepted upon delivery, unless Buyer notifies Seller to the contrary within five working days of delivery.

## **8. STANDARD WARRANTY**

8.1 Unless specified otherwise, Seller warrants to Buyer that Dell branded products (excluding third party products and software), will be free from defects in materials and workmanship affecting normal use for a period of one year from invoice date ("Standard Warranty"). During this period, if Dell branded products cannot meet the Standard Warranty, Seller will be responsible for the repair or replacement of such products that have been returned from Buyer to Seller's facility.

8.2 Notwithstanding anything herein, to the extent applicable, Seller will undertake to comply with the published regulations of the People's Republic of China which are relevant to the warranty of products and after sale services and as otherwise consistent with the applicable industry standards.

8.3 This Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, usage and/or storage and/or installation not in accordance with product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than Seller's personnel or any person authorized by Seller, to adjust, repair or support the products and problems caused by use of parts and components not supplied by Seller. The Standard Warranty does not cover any non-Dell branded products.

8.4 Buyer agrees that, in relation to non-Dell branded products purchased through Seller, where such of the products are covered by the originating manufacturer's warranty, then the Standard Warranty shall not extend to such products and such originating manufacturer's warranty shall be the sole warranty in respect of such products. Buyer shall utilize that warranty for the support of such products.

## **9. ADDITIONAL SERVICE AND TECHNICAL SUPPORT**

If Buyer purchases additional service to be provided by Seller, Seller will, in addition to the above Standard Warranty, provide service to Buyer in accordance with the specific terms and conditions in the additional service contract between Seller and Buyer. Seller has no obligation to provide services until Seller has received full payment for the product or service contract for which service or technical support is requested. Specific terms and conditions of service and

technical support are available via the Internet on Seller's Web site at [//www.dell.com/learn/cn/zh/cncorp1/terms-conditions/html-terms-technical-reseller-en?c=cn&l=zh&s=corp&cs=cncorp1](http://www.dell.com/learn/cn/zh/cncorp1/terms-conditions/html-terms-technical-reseller-en?c=cn&l=zh&s=corp&cs=cncorp1) or upon request.

## **10. LIABILITY**

10.1 Unless otherwise specified by law, Seller's total liability herein in respect of each event or series of connected events shall not exceed the total price paid for the purchase of products and/or services under these Terms and Conditions.

10.2 Seller shall not be liable to Buyer for any consequential damages arising out of or in connection with the purchase, use or performance of products or services (including in circumstances where data or software is lost, corrupted, deleted or altered, etc.)

10.3 Both parties agree: Seller may in respect of any typographical error, clerical error or other omission in sales literature, quotations, price lists acceptances of orders, invoices or other documents or information issued by Seller, carry out corrections and the documents after correction shall govern.

## **11. EXPORT RESTRICTIONS**

Buyer acknowledges that the purchased goods licensed or sold under this agreement, which may include technology and software, are subject to the Customs and export control laws and regulations of China and the United States ("U.S.") and may also be subject to the Customs and export laws and regulations of the country in which the products are manufactured and/or received. For any authorized resale under this agreement, Buyer acknowledges that it is Buyer's sole responsibility to comply with those laws and regulations and agrees to fully abide by those laws and regulations. Further, under those laws, the goods shipped pursuant to this agreement may not be sold, leased or otherwise transferred to restricted end-users (including those on the U.S. Department of Commerce, Bureau of Industry and Security "Entity List" and other lists of denied parties) or to restricted countries (currently Cuba, Iran, North Korea, Sudan, and Syria). In addition, the shipped goods may not be sold, leased or otherwise transferred to, or utilized by an end-user engaged in activities related to weapons of mass destruction, including without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, and chemical or biological weapons. In addition, Buyer agrees to indemnify, defend and hold Seller harmless from any loss, expense, penalty or claim against Seller due to Buyer's violation or alleged violation of any such applicable laws and regulations. If purchased goods are resold in violation of the foregoing restrictions, Seller shall not be obligated to provide any warranty service or technical support.

## **12. USE OF LOGO**

Buyer may use Dell's name or Dell's product names (including trademarks, service marks, logos and copyrighted documents, etc.) as agreed by Seller only for the purpose of accurately identifying Dell branded products purchased and resold by Buyer under a Sales Contract. If Seller deems that Buyer inaccurately, misleadingly or corruptly uses Dell's name, trademark, service mark, logo or any copyrighted document in connection with any literature or activity, Seller may request Buyer to make modification or cease using. Buyer agrees to immediately make modifications or cease using in accordance with Seller's requirements and bear all relevant costs. Buyer shall not use Dell's name or Dell's product names for any other purpose. Buyer shall not at any time use any other Dell's name, trademark, service mark, logo or copyrighted document. Buyer shall not register or use any domain name or trade name that contains Dell's name or logo or may lead to confusion as a consequence of its similarity to Dell's name or logo.

## **13. GOVERNING LAW**

These Dell Standard Sales Terms shall be governed by and construed in accordance with the laws of the People's Republic of China. Any dispute arising in connection with these Dell Standard Sales Terms shall to the extent possible be settled through friendly consultations between the parties. If the dispute cannot be settled through consultations, either party may refer the dispute to a competent People's Court where Seller is located to resolve through litigation.

## **14. MISCELLANEOUS**

14.1 Buyer shall not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of Seller's products or Seller or any of its subsidiary companies or affiliates or other practices which may be detrimental to the products or the public interest.

14.2 Buyer shall not make any promises or representations or give any warranties or guarantees in respect of the products except such as are consistent with those in the product documentation or which otherwise accompany the products or as expressly authorized by Seller in writing. Seller shall not be held liable for any promise, representation, warranty or guarantee made or given by Buyer to its customers.

14.3 Except in respect of proper use, Buyer shall not alter or modify the products or the product documentation.

14.4 All intellectual property rights in or relating to the products and the product documentation are and shall remain the property of Seller, its parent or affiliates or its licensors, as the case may be.

14.5 Buyer shall indemnify, defend and hold harmless Seller and its shareholders, directors, officers, employees, agents, representatives, successors and assigns (collectively, the "Dell Parties") from and against any and all claims, demands, obligations, liabilities, actions, suits, proceedings, judgments, decrees, losses, damages, costs, charges and expenses (including without limitation reasonable expenses of investigation and reasonable attorneys' fees and reimbursements in connection with any of the foregoing whether involving a third party or solely between the parties) which any of the Dell Parties may sustain or incur, or which may be brought or established against any of the Dell Parties by any person and which in any case arise out of or in relation to or by reason of, directly or indirectly: (1) the negligence, recklessness or willful misconduct of Buyer in the performance of any of its obligations including but not limited to, in connection with the storage, marketing, supply, installation or maintenance of the products; (2) any unauthorized action or omission of Buyer or its agents, representatives and employees; (3) the manner in which Buyer markets and sells the products; (4) the independent supply by Buyer of any products or services for use in conjunction with or in relation to the products; (5) any breach or alleged breach of any applicable laws or regulations relating to the use, marketing or sale by Buyer or any of its customers of the products; (6) neglect to follow any recommendations made by Seller relating to the use, marketing or sale by Buyer of Dell's products; or (7) any breach by Buyer of the Sales Contract, or any representation or warranty made or given by it to Seller.

14.6 Unless otherwise mutually agreed by the parties in writing, any alteration or amendment to or in connection with the Sales Contract shall be presented in writing and takes effect only after written confirmation by signature and/or legally authorized chop.