



GENERAL TERMS AND CONDITIONS OF SALE

1. GENERAL.

- 1.1. These General Terms and Conditions of Sale (hereinafter referred to as "Terms of Sale") govern the offering, sale and delivery of all Products and/or Services (as further defined below) from or on behalf of comforte, Inc. (hereinafter referred to as "comforte") to its customers (hereinafter, each individually and all customers collectively, referred to as "Customer") and apply to all similar dealings between comforte and Customer.
- 1.2. These Terms of Sale supersede any and all prior oral and written quotations, communications, agreements and understandings of the parties in respect of the sale and delivery of the Products and shall apply in preference to and supersede any and all terms and conditions of any order placed by Customer and any other terms and conditions submitted by Customer. Failure of comforte to object to any terms and conditions set by Customer in such other terms and conditions shall in no event be construed as an acceptance of any terms and conditions of Customer. Neither comforte's commencement of performance nor comforte's delivery shall be deemed or constituted as acceptance of any of Customer's terms and conditions. If these Terms of Sale differ from any terms and conditions of Customer, these Terms of Sale and any subsequent communication or conduct by or on behalf of comforte, including, without limitation, confirmation of an order and delivery of Products, constitutes a counter-offer and not acceptance of such terms and conditions submitted by Customer. Any communication or conduct of Customer which confirms an agreement for the delivery of Products by comforte, as well as acceptance by Customer of any delivery of Products from comforte shall constitute an unqualified acceptance by Customer of these Terms of Sale.
- 1.3. Any deviations from these Terms of Sale require the written approval of each party. However, deviating terms in any written agreement between comforte and Customer shall supersede these Terms of Sale.
- 1.4. By contracting on the basis of these Terms of Sale, Customer agrees to the applicability thereof in respect of future dealings as described in Section 1.1, even if this is not expressly stated.

2. DEFINITIONS.

- 2.1. Documentation is user manuals, training materials, Product descriptions and specifications, technical manuals, license agreements, supporting materials and other information relating to Products or Services offered by comforte, whether distributed in print, electronic, CD-ROM or video format.
- 2.2. License is a non-perpetual, non-exclusive, non transferable limited license to install and use the Products.



- 2.3. Products are, individually or collectively as appropriate, Software, Documentation and, as the case may be, hardware in the product portfolio of comforte.
- 2.4. Purchase Order is an order issued by Customer to comforte for Products or Services to be purchased, licensed or provided under these Terms of Sale.
- 2.5. Services are any maintenance, technical support, or any other services performed or to be performed by comforte, provided that "Services" does not include those services for which COMFORTE requires a separate statement of work to be executed between the parties.
- 2.6. Software is the machine readable (object code) version of the computer programs made available by comforte for license to Customer, and any copies made, bug fixes for, updates to, or upgrades thereof.

3. QUOTES, PRICES AND ORDERS.

- 3.1. Orders are not binding until accepted by comforte in writing, delivery of the Product or invoice by comforte (each, a "comforte Confirmation").
- 3.2. Price quotations based on estimated or projected quantities are subject to increase in the event that actual quantities purchased during the specified period are less than the estimated or projected quantities.
- 3.3. Statements and agreements made by comforte's employees, officers, representatives and/or agents are not binding upon comforte unless, and only to the extent that, these are confirmed or made in writing by duly authorized representative(s) of comforte.
- 3.4. Unless otherwise specifically specified in any written agreement between comforte and Customer, prices for Products and Services shall be those specified in comforte's valid written price quotation submitted by comforte to Customer for such Products or Services.
- 3.5. All prices are exclusive of any freight, handling and shipping insurance charges, taxes, government fees and duties or other similar amounts, however designated, including without limitation value added, sales and withholding taxes which are levied or based upon the prices, charges or upon these Terms of Sale. Customer shall pay any taxes related to Products and Services provided pursuant to these Terms of Sale (except for taxes based on comforte's revenue income) or shall present an exemption certificate acceptable to all relevant taxing authorities. Applicable taxes shall, to the extent practical, be billed as a separate item on the invoice.
- 3.6. comforte reserves the right to increase the license renewal fees upon renewal of the initial term no less than three per cent (3%) of the applicable license fee. Such increase may apply every year.



3.7. Customer shall purchase or license Products or Services by issuing a Purchase Order, signed, if requested by comforte, or (in the case of electronic transmission) sent by its authorized representative, indicating specific Products and Services, comforte Product numbers, quantity, unit price, total purchase price, shipping instructions, requested shipping dates, bill-to and ship-to addresses, tax exempt certifications, if applicable, contract reference, and identity of the end user for each Product and Service. No contingency contained on any Purchase Order shall be binding upon comforte. The terms of these Terms of Sale shall apply, regardless of any additional or conflicting terms on any Purchase Order or other correspondence or documentation submitted by Customer to comforte, and any such additional or conflicting terms are deemed rejected by comforte.

3.8. comforte shall use commercially reasonable efforts to provide order acknowledgement information within ten (10) business days of receipt for Purchase Orders placed. Upon and subject to credit approval by comforte following comforte's receipt of any Purchase Order, comforte will review and accept or decline any or all Purchase Orders, and no other person is authorized to accept Purchase Orders on behalf of comforte. comforte may accept a Purchase Order even if some of the information required by Section 3.7 above is missing or incomplete.

3.9. Customer may defer Product delivery for up to thirty (30) days from the delivery date originally scheduled by comforte, provided written or electronic notice (issued, in either case, by an authorized representative of Customer) is received by comforte at least ten (10) days before the originally scheduled shipping date. Cancelled Purchase Orders, rescheduled deliveries or Product configuration changes requested by Customer less than ten (10) days before the original scheduled shipping date shall be subject to (a) acceptance by comforte, and (b) a charge of fifteen percent (15%) of the total invoice amount relating to the affected Products. comforte reserves the right to reschedule delivery in cases of configuration changes requested by Customer within ten (10) days of scheduled delivery. No cancellation shall be accepted by comforte where Products are purchased with implementation services, including design, customization or installation services, except as may be set forth in any agreement under which Services shall be rendered.

4. DELIVERY OF PRODUCTS.

4.1. Unless otherwise specifically specified in any written agreement or Purchase Order between comforte and Customer, any and all deliveries, including without limitation downloads of Software, shall take place at the offices of comforte at 30 Wall Street, 8th Floor, New York, NY 10005-2205, USA.

4.2. Scheduled delivery dates will be agreed upon between comforte and Customer in a separate written agreement or may be assigned by comforte as close as practicable to Customer based on comforte's then-current lead times for the Products. In the event of shipping of Products on Customer's behalf and upon specific written instruction provided by Customer only, comforte will communicate scheduled shipping dates to Customer.



4.3. If Customer requests delivery of Products at a location other than specified in Section 4 above and which is outside the United States, Customer shall assume all responsibility for compliance with applicable export laws and regulations, including the preparation and filing of shipping documentation necessary for export clearance.

4.4. COMFORTE SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR PENALTY FOR DELAY IN DELIVERY OR FOR FAILURE TO GIVE NOTICE OF ANY DELAY. EXCEPT IN ACCORDANCE WITH THE APPLICABLE SHIPPING TERMS SET FORTH IN THESE TERMS OF SALE, COMFORTE SHALL NOT HAVE ANY LIABILITY IN CONNECTION WITH DELIVERY, NOR SHALL ANY CARRIER BE DEEMED TO BE AN AGENT OF COMFORTE.

4.5. All sales are final. Except as provided in comforte's warranty statements, comforte does not accept returns unless (i) comforte delivered a product other than as specified in the Purchase Order, (ii) such Product, unless Software that has been delivered by making available for download, is unopened, and (iii) the Product is returned in accordance with comforte's then current return policy.

4.6. Each delivery shall stand as a separate transaction and any failure to deliver shall have no consequences for other deliveries.

5. PAYMENT.

5.1. Unless otherwise specifically specified in any written agreement between comforte and Customer, comforte payment terms shall be thirty (30) days from delivery date and all payments shall be made in the currency of the price quotation applicable to the Purchase Order.

5.2. If at any time Customer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms of Sale, comforte may, in its discretion, and without prejudice to its other rights, withhold delivery (including partial deliveries) of any order, require Customer to prepay for further deliveries, and/or withhold the provision of Services, until complete payment has been received.

5.3. Any sum not paid by Customer when due shall bear interest from the due date until paid at a rate of (i) eight per cent per annum or (ii) the maximum rate permitted by law, whichever is less.

6. WARRANTY AND LIMITATION OF LIABILITY.

6.1. comforte represents and warrants that it has the full right and authority to sell and/or license to Customer those Products it provides to Customer pursuant to this Agreement.

6.2. Unless otherwise specifically specified in any written agreement between comforte and Customer, comforte disclaims any and all warranties and other conditions with respect to any Product and Service.



6.3. Neither party's liability for damages, regardless of the form of action, will not exceed the fees paid by the Customer for the purchase or license of the Products or Services during the twelve (12) months immediately preceding the date when such damages occurred. The preceding sentence shall not apply to damages for or relating to personal injury, death or property damage or to damages arising from the gross negligence or willful misconduct of either party.

6.4. THE FOREGOING SECTION 6.2 STATES CUSTOMER'S EXCLUSIVE REMEDY, WHICH IS IN LIEU OF ALL OTHER LEGAL OR EQUITABLE REMEDIES AND ALL LIABILITIES OR OBLIGATIONS ON THE PART OF COMFORTE FOR DAMAGES (EXCEPT FOR BODILY INJURY) ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE LICENSING, DELIVERY, INSTALLATION, USE OR PERFORMANCE OF THE SOFTWARE, THE INTEGRATION OF THE SOFTWARE WITH OTHER SOFTWARE OR HARDWARE OR THE SERVICES PROVIDED HEREUNDER.

6.5. IN NO EVENT SHALL EITHER PARTY ,ITS RESPECTIVE OFFICERS, REPRESENTATIVES OR EMPLOYEES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, LOST DATA, LOSS OF USE, FAILURE TO REALIZE EXPECTED SAVINGS, OR OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND OR FOR ANY CLAIM AGAINST THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THE PURCHASE, DELIVERY, USE, PERFORMANCE OR LICENSING OF THE SOFTWARE OR SERVICES PERFORMED UNDER THIS AGREEMENT OR ANY BREACH OF THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.6. Intellectual Property Indemnity. comforte agrees to defend, indemnify and hold Customer harmless from and against all claims, damages, and losses, howsoever arising and whether direct, indirect, or consequential, including all legal fees and expenses, arising from claims brought by any third party alleging that the Products or Software infringes upon or otherwise violates such third party's intellectual property rights.

7. SERVICES.

Customer may place Purchase Orders for the various Services offered by comforte. Such Services, if accepted by comforte, shall be subject to these Terms of Sale, as well as the additional terms and conditions set forth in comforte's then-current applicable service level schedule that describe the deliverables and other terms applicable to such Services unless an existing agreement is in effect in which case the terms of the Existing Agreement shall govern any such Services.



8. EXPORT, RE-EXPORT, TRANSFER & USE CONTROLS.

The Products supplied by comforte under these Terms of Sale are subject to export controls under the laws and regulations of the United States (U.S.). Customer shall comply with such laws and regulations governing export, re-export, transfer and use of comforte Products and will obtain all required U.S. and local authorizations, permits, or licenses. comforte and Customer each agree to provide the other information, support documents, and assistance as may reasonably be required by the other in connection with securing authorizations or licenses.

9. GENERAL.

9.1. **Governing Law and Jurisdiction.** The parties' rights and obligations arising out of or in connection with comforte's Confirmation and/or these Conditions shall be governed, construed, interpreted and enforced according to the laws of the state of New York, United States, excluding principles of conflict of laws. The applicability of the United Nations Convention on Contracts for the International Sale of Products is excluded.

9.2. The parties agree that any suits, actions or proceedings that may be instituted by any party shall be initiated exclusively before the Federal District Court for the Southern District of New York, United States without prejudice to comforte's right to submit the relevant case to the court which would have jurisdiction if this provision has not been incorporated in the Conditions, and the parties do hereby consent to the jurisdiction of those courts and waive any objection which they may have, now or hereafter, to venue of those suits, actions or proceedings.

9.3. **Force Majeure.** Except for the obligation to pay monies due and owing, neither party shall be liable for any delay or failure in performance due to events outside the defaulting party's reasonable control, including, without limitation, acts of God, earthquakes, labor disputes, industry-wide shortages of supplies, actions of governmental entities, riots, war, terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the defaulting party shall be extended for a period equal to the period during which such event prevented such party's performance.

9.4. **No Waiver.** Failure by either party to enforce at any time any provision of these Conditions shall not be construed as a waiver of such party's right to act or to enforce any such term or condition and comforte's rights shall not be affected by any delay, failure or omission to enforce any such provision. No waiver by either party of any breach of the other's obligations shall constitute a waiver of any other prior or subsequent breach.



9.5. Severability. In the event that part of or one or more terms of these Terms of Sale become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from these Terms of Sale. All remaining terms of these Terms of Sale shall remain in full force and effect. Notwithstanding the foregoing, if this paragraph is invoked and, as a result, the value of these Terms of Sale is materially impaired for either party, as determined by such party in its sole discretion, then the affected party may terminate these Terms of Sale by written notice with immediate effect to the other.

9.6. No Agency. These Terms of Sale do not create any agency, partnership, joint venture, or franchise relationship. No employee of either party shall be or become, or shall be deemed to be or become, an employee of the other party by virtue of the existence or implementation of these Terms of Sale. Each party hereto is an independent contractor. Neither party shall assume or create any obligation of any nature whatsoever on behalf of the other party or bind the other party in any respect whatsoever.

9.7. Survival. The parties' rights and obligations shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, directors, officers, employees, agents and legal representatives. Termination of one or more of the rights and obligations of the parties, for whatsoever reason, shall not affect the provisions of these Conditions which are intended to continue to have effect after such termination.

9.8. Headings. Headings of sections have been added solely for convenience of reference and shall not be deemed part of these Terms of Sale.