

**MITCHELL COMPUTER SERVICES, INC.'S**  
**TERMS AND CONDITIONS**

**ENTIRE AGREEMENT:** All proposals to provide goods and/or services by Mitchell Computer Services, Inc. ("Quotes"), and acceptances of any purchase orders to Mitchell ("Acceptances"), are **EXPRESSLY CONDITIONED UPON ACCEPTANCE OF THESE STANDARD TERMS AND CONDITIONS. DIFFERENT OR ADDITIONAL TERMS IN ANY PURCHASE ORDER, PROPOSAL, OR ACCEPTANCE, OR IN ANY CHANGE ORDER RELATED TO EITHER, OR IN ANY OTHER DOCUMENT GENERATED BY OR BETWEEN MITCHELL AND CUSTOMER, ARE HEREBY REJECTED AND NO PRIOR OR SUBSEQUENT CONDUCT OF MITCHELL SHALL BE DEEMED TO BE AN ACCEPTANCE OF DIFFERENT OR ADDITIONAL TERMS.** All Quotes and Acceptances of purchase orders, as controlled by these Terms and Conditions, shall be the entire agreement of the parties relating to the goods or services ordered and shall supersede any other agreement whether written or oral. No modification of the agreement shall be valid unless in writing and signed by each of the parties, however THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL NOT BE MODIFIED UNLESS CHANGES ARE MADE IN WRITING UPON A PRINTED VERSION OF THIS DOCUMENT, WITH SUCH CHANGES INITIALED AND WITH THE DOCUMENT SIGNED BY EACH OF THE PARTIES. ONLY MITCHELL'S PRESIDENT HAS THE AUTHORITY TO SIGN MODIFICATIONS HEREOF UPON A PRINTED VERSION OF THIS DOCUMENT.

**ACCEPTANCE:** A Quote from Mitchell constitutes and offer by Mitchell to Customer. Any documentation generated prior to Mitchell's Quote that is construed as constituting an offer from Customer upon the subject of Mitchell's Quote is specifically rejected. Customer may accept the offer in Mitchell's Quote: (1) in writing; (2) by delivery or receipt of all or part of the goods or services specified in the Quote; or (3) by making payment to, Mitchell for all or part of the goods or services specified in the Quote, but no matter the form of Customer's acceptance of Mitchell's offer, such acceptance is **expressly conditioned** upon acceptance of Mitchell's specific Terms and Conditions as contained in the Quote and in this document. Mitchell's Acceptance of a Customer's purchase order expressly conditioned upon these Terms and Conditions constitutes a counter-offer by Mitchell to Customer's purchase order. Customer may accept Mitchell's counter-offer: (1) in writing acknowledging same; (2) by accepting delivery of all or part of the goods or services specified in Customer's purchase order without objection to these terms; or (3) by paying Mitchell for all or part of the goods or services specified in Customer's purchase order after delivery, but no matter the form of Customer's acceptance of Mitchell's counter-offer, such acceptance of is **expressly conditioned** upon acceptance of Mitchell's specific Terms and Conditions as contained in this document.

**PAYMENT:** All invoices from Mitchell to Customer shall be due and payable within such time frame as contained on the face of the invoice. ANY AMOUNTS NOT PAID BY CUSTOMER WITHIN THIRTY (30) DAYS OF THE DUE DATE AS INDICATED ON THE FACE OF MITCHELL'S INVOICE SHALL BE SUBJECT TO A LATE FEE OF TWENTY-FIVE AND NO/100'S DOLLARS (\$25.00) EACH MONTH UNTIL THE INVOICE IS PAID IN FULL.

**TAXES:** Mitchell reserves the right to charge Customer with the amount of any taxes which Mitchell may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption, services or transportation of any of the products or goods sold to Customer.

**DELIVERY:** Manufacture, shipment and delivery shall be subject to any prohibition or regulation imposed by the Federal or any state or local government or any subdivision or agency thereof. Mitchell shall not be liable for any delay or failure to perform in whole or in part, directly or indirectly resulting from or contributed to by acts of God, war, riot, embargoes, acts of civil or military authorities, national or state emergencies, insurrection, or riots, fires, floods, strikes, work stoppage, accidents, casualties, pandemics, governmental orders, inability to procure supplies and raw materials, delays in transportation, shortage of cars, or other causes beyond Mitchell's control.

**NO RESPONSIBILITY FOR DATA LOSS OR ADDITIONAL MATTERS:** Mitchell shall not be responsible for any data loss occurring as a result of repair efforts by Mitchell. Further, in connection with repairs, Mitchell shall not be responsible for additional issues not specified by Customer in the description of the problem(s) to be repaired.

**NO RESPONSIBILITY FOR CORRUPT DATA:** In connection with Mitchell providing data back up services to Customer, Mitchell shall not be responsible for the quality of data Customer provides and shall not be responsible for insuring that Customer's data being backed up by Mitchell is not corrupted prior to being backed up by Mitchell. In providing such services, Mitchell's sole responsibility shall be to back up such data as it exists with Customer. Mitchell's liability for providing such services to Customer shall be limited to the lesser of Customer's actual damages or one-month's charges to Customer for such services and Mitchell shall not be responsible to, nor indemnify, Customer or any third parties for any claims, losses, labor, expenses or damages, direct or consequential, resulting directly or indirectly from the performance by Mitchell of such services, including, without limitation, loss of profits because of increase operating costs, loss of information, loss of production or shutdown of operation or otherwise, or any liabilities, claims and damages because of personal injury, death or property damage related in any way thereto in excess of the limitation of damages herein provided.

**CANCELLATIONS:** The contract resulting from Customer's order cannot be cancelled, terminated or modified by Customer in whole or in part, except with Mitchell's consent in writing and then only upon terms and conditions to be agreed upon which shall include protection of Mitchell against all loss direct and consequential.

**LOSS OR DAMAGE IN TRANSIT:** In case of loss or damage in transit or failure to receive shipment within a reasonable time, the consignee must immediately notify in writing the carrier's agent at destination and Mitchell. This action is necessary in order to preserve the right to recover damage from the carrier and to substantiate formal claim when presented. Title and risk

of loss pass to Customer upon delivery of products to Customer or to carrier at shipping point. Mitchell shall not be liable for any damage, loss or expense resulting from anything occurring during, or attributable to transportation.

**CLAIMS/WARRANTIES AND LIMITATION OF LIABILITY:** Mitchell warrants that it has absolute title and full right to transfer good and merchantable title to all goods delivered to Customer; that the goods are now and at the time of delivery shall be free of any security interest, lien or encumbrance; and that the goods provided shall be free from defects in material and workmanship. Such warranties shall extend for the lesser of a period one (1) year, for such period as the manufacturer of the newly manufactured goods provides, or such period of time as Mitchell shall provide upon its Quote for used goods provided. Mitchell will not allow any allowances, deductions or return of products except by written permission of Mitchell. Mitchell shall not be liable to, nor indemnify, Customer or any third parties for any claims, losses, labor, expenses or damages, direct or consequential, resulting directly or indirectly from the performance by Mitchell or the use of, or in ability to use the goods sold or services provided hereunder, including, without limitation, loss of profits because of increase operating costs, loss of information, loss of production or shutdown of operation or otherwise, and liabilities, claims and damages because of personal injury, death or property damage. Notwithstanding the foregoing, goods proving defective in material and/or workmanship per warranty will be repaired or replaced, or, at Mitchell's sole option, credit will be allowed for the original price thereof, provided written claim in respect of such products or services is made by Customer within the warranty period and use of such goods is promptly discontinued by Customer after discovery of defect. No warranty is provided for services provided by Mitchell to Customer. THE FOREGOING IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES OR REMEDIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ANY OTHER OBLIGATIONS OR LIABILITY ON THE PART OF MITCHELL.

**REMEDIES:** (a) Mitchell shall have all remedies allowed by law, including the Uniform Commercial Code's remedies; (b) Customer's sole remedy shall be limited to the repair or replacement of defective products or, at Mitchell's option, credit for the original price of the goods provided; (c) In case Customer shall fail to make payments in accordance with the terms as set forth herein, Mitchell, in addition to its rights and remedies under the law, may at its option defer providing further goods or services until such payments are made, or may terminate any orders, and Customer shall not have any cause of action or be entitled to any off-set, counter-claim or recoupment against Mitchell by reason of any such action; (d) If the Customer shall fail to make payments in accordance with the terms of any invoice, Mitchell shall be entitled to reimbursement for all collection and related legal costs from the buyer in order to secure the payments due, including a reasonable attorney's fee; (e) No failure of Mitchell to insist upon strict compliance by Customer with these terms and conditions or to exercise any right accruing from any default of Customer shall impair Mitchell's rights in case Customer's default continues or in case of any subsequent default by Customer.

**WAIVER:** Waiver by either Mitchell or Customer of a breach by the other of any provisions herein shall not be deemed a waiver of future compliance therewith; any such provisions shall remain in full force and effect.

**GOVERNING LAW:** The agreement between the parties shall be deemed made and performed in the State of Alabama. The construction, interpretation and performance of all transactions between Mitchell and Customer shall be governed by the law of the State of Alabama, including Alabama's version of the Uniform Commercial Code. Jurisdiction and Venue for any cause of action between the parties shall lie exclusively in the Circuit Court of Morgan County, Alabama, and neither party shall have a right to bring or remove an action in or to any Federal Court. In the event any action between the parties is brought or removed to Federal Court, this exclusive venue clause shall be contractually controlling, and upon motion to transfer or remand by Mitchell, the Federal Court shall transfer or remand the action to the Circuit Court of Morgan County, Alabama despite any objection or opposition by Customer to such transfer or remand. Reference to specific remedies of Mitchell herein does not exclude other available remedies of Mitchell. Customer agrees and consents to the exclusive jurisdiction and venue of the Circuit Court of Morgan County, Alabama in connection with any action between the parties and waives any objection based upon forum non conveniens.

**WAIVER OF JURY TRIAL & EXEMPLARY DAMAGES: EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR BETWEEN THE PARTIES. EACH PARTY HEREBY FURTHER IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO CLAIM PUNITIVE OR EXEMPLARY DAMAGES WITH RESPECT TO ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR BETWEEN THE PARTIES.**

**NOTICES:** Notices shall be sent by nationally recognized overnight courier at the addresses shown on Mitchell's Quote and for Customer upon Customer's purchase order or upon Mitchell's invoice to Customer, and any required Notice shall be effective the date of actual delivery.

**RELATIONSHIP OF PARTIES:** The relationship between the parties shall not be construed as creating any agency, joint venture or employment relationship.

**ABANDONED PROPERTY:** Any equipment provided to Mitchell by the Customer for repairs which is not picked up by Customer within thirty (30) days of delivery to Mitchell for repair shall be considered abandoned and shall become the property of Mitchell to be disposed of at Mitchell's sole discretion to cover any repair costs or materials.

Revised 1-20-2021