

Rimage Corporation Purchase Order Terms and Conditions

- 1. Applicability.** These Purchase Order Terms and Conditions (the “Terms”) govern any purchase order issued by Rimage Corporation (“Rimage”) to which these Terms are attached or that incorporates these Terms by reference (the “Purchase Order”). The issuance of the Purchase Order to the seller identified in the Purchase Order (the “Seller”) is an offer by Rimage for the purchase of the goods and/or services specified in the Purchase Order (collectively, the “Products”) from Seller in accordance with and subject to these Terms. The Terms together with the terms of the Purchase Order are referred to herein as the “Order”. The Order, together with any documents incorporated therein by reference, constitutes the sole and entire agreement of the parties with respect to the Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order. The Order expressly limits Rimage’s acceptance to the terms of the Order. The Order’s terms and conditions prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller’s terms and conditions of sale or any other document issued by Seller in connection with the Order. These Terms apply to any repaired or replacement Products provided by Seller hereunder. Rimage is not obligated to any minimum purchase or future purchase obligations under the Order.
- 2. Acceptance.** The Order is not binding on Rimage until Seller accepts the Order by providing a written confirmation to Rimage (email acceptable) or starting performance in accordance with the Order and providing Rimage written notification of its performance (email acceptable) within 3 days of Seller’s receipt of the Order. If Seller does not accept the Order within 3 days of Seller’s receipt of the Order, the Order will lapse. Rimage may withdraw the Order at any time before it is accepted by Seller.
- 3. Delivery Date.** Subject to Section 4, Seller shall deliver the Products in the quantities and on the date(s) specified in the Purchase Order; if no delivery date is specified in the Purchase Order, Seller shall deliver the Products promptly from Seller’s receipt of the Purchase Order (the “Delivery Date”). Timely delivery of the Products is of the essence. If Seller fails to deliver the Products in full on the Delivery Date, Rimage, in its sole option, may: (a) agree in writing to a different Delivery Date; or (b) terminate the Order immediately, without liability to Seller, by providing written notice to Seller.
- 4. Quantity.** If Seller delivers more than the quantity of Products ordered, Rimage may reject any or all excess Products. Any such rejected Products shall be returned to Seller at Seller’s risk and expense. The total Price (as hereinafter defined) for the Products shall be adjusted on a pro rata basis to include any excess Products not rejected by Rimage. Seller shall in no event deliver to Rimage less than the quantity of Products ordered except with Rimage’s express prior written consent, which may be withheld in Rimage’s discretion.
- 5. Delivery Point.** Seller shall deliver the Products to the address specified in the Purchase Order (the “Delivery Point”) during Rimage’s normal business hours or as otherwise instructed by Rimage.
- 6. Shipping Terms.** Title passes to Rimage upon delivery of the Products to the Delivery Point. Seller bears all risk of loss or damage to the Products until delivery of the Products to the Delivery Point. Seller shall be responsible for arranging the shipping of the Products to Rimage according to Rimage’s

instructions or, if there are no instructions, in a manner sufficient to ensure that the Products are timely delivered in undamaged condition and in compliance with the terms and conditions of the Order, industry standard, and applicable law. Seller shall pay all costs of carriage and insuring the Products in transit to the Delivery Point. Unless otherwise specified in the Purchase Order, the Price (defined below) includes all insurance, customs duties, packaging, and transportation costs to the Delivery Point. Seller shall give written notice (email acceptable) of shipment to Rimage when the Products are delivered to a carrier for transportation. Seller shall provide Rimage all shipping documents, including, but not limited to, the commercial invoice, packing list, air waybill/bill of lading, and any other documents necessary to release the Products to Rimage within 2 business days after Seller delivers the Products to the transportation carrier. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence, and any other documents pertaining to the Order. Unless otherwise specified in the Purchase Order, Seller may not make partial shipments of Products to Rimage. All Products shall be packed for shipment in accordance with applicable law and industry standards and according to Rimage's instructions or, if there are no instructions, in a manner sufficient to ensure that the Products are delivered in undamaged condition. Seller must provide Rimage prior written notice if it requires Rimage to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

7. Amendment and Modification. No change to the Order is binding upon Rimage unless it is in writing, specifically states that it amends the Order, and is signed by an authorized representative of Rimage.

8. Inspection and Rejection of Nonconforming Products. Rimage has the right to inspect the Products on or after the Delivery Date. Rimage, at its sole option, may inspect all or a sample of the Products, and may reject all or any portion of the Products if it determines the Products are damaged, defective, or otherwise nonconforming. If Rimage rejects any portion of the Products, Rimage has the right, at its sole option and effective upon written notice to Seller, to: (a) terminate the Order in its entirety, without liability to Seller; (b) accept the Products at a reasonably reduced price; or (c) require replacement of the rejected Products. If Rimage requires replacement of the Products, Seller shall, at its risk and expense, promptly replace the rejected Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the rejected Products and the delivery of replacement Products. If Seller fails to timely deliver replacement Products, Rimage may replace them with products from a third party and charge Seller the cost thereof and terminate the Order for cause pursuant to Section 15. Any exercise by Rimage of its rights and remedies under this Section 8 shall not reduce Seller's obligations or Rimage's rights and remedies under the Order or applicable law, and Rimage shall have the right to conduct further inspections after Seller has carried out any remedial actions.

9. Price. The price of the Products is the price stated in the Purchase Order (the "Price"). If no price is included in the Purchase Order, the Price shall be the price set out in Seller's published price list in force as of the date of the Purchase Order. Unless otherwise specified in the Order, the Price includes all fees and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor, or transportation costs or otherwise, without the prior written consent of Rimage.

10. Payment Terms. Seller shall issue an invoice to Rimage on or any time after the completion of delivery and only in accordance with the Terms. Rimage shall pay all properly invoiced and undisputed amounts due to Seller within 30 days after Rimage's receipt of such invoice. In the event of a payment dispute, Rimage shall deliver a written statement to Seller prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy it may have, Rimage reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Rimage to Seller.

11. Warranties. Seller represents, warrants, and covenants to Rimage that: (a) for a period of 12 months from the Delivery Date, all Products will: (i) be free from any defects in workmanship, material, and design; and (ii) conform to applicable specifications, drawings, designs, samples, and other requirements specified by Rimage; (b) no claim, lien, or action exists or is threatened against Seller that would interfere with Rimage's use or sale of the Products; (c) the Products do not and will not infringe or misappropriate any third party's patent or other intellectual property rights; and (d) Rimage will receive good and valid title to the Products, free and clear of all encumbrances and liens of any kind. These warranties survive any delivery, inspection, acceptance, or payment of or for the Products by Rimage. These warranties are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Rimage's discovery of the noncompliance of the Products with the foregoing warranties. If Rimage gives Seller notice of noncompliance with this Section, in addition to other remedies available to Rimage under the Order or at law or equity, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Products and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective or nonconforming goods to Seller and the delivery of repaired or replacement Products to Rimage.

12. General Indemnification. Seller shall defend, indemnify, and hold harmless Rimage and Rimage's parent company, their subsidiaries, affiliates, successors or assigns, and their respective directors, officers, shareholders, managers, members, advisors, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, or expense, including, but not limited to, reasonable attorney and professional fees and costs and the cost of enforcing any right to indemnification hereunder (collectively, "Losses"), arising out of or occurring in connection with the Products or Seller's negligence, willful misconduct, or breach of the Order. Seller shall not enter into any settlement without Rimage's or, as applicable, another Indemnitee's prior written consent.

13. Intellectual Property Indemnification. Seller shall, at its expense, defend, indemnify, and hold harmless Rimage and any other Indemnitee against any and all Losses arising out of or in connection with any claim that Rimage's or such Indemnitee's use or possession of the Products infringes or misappropriates the patent, copyright, trade secret, or other intellectual property right of any third party. In no event shall Seller enter into any settlement without Rimage's or, as applicable, another Indemnitee's prior written consent.

14. Compliance with Law. Seller is in compliance with and shall comply with all applicable laws, regulations, and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under the Order.

15. Termination. Rimage may terminate the Order, in whole or in part, at any time with or without cause for unshipped Products upon prior written notice to Seller. In addition to any other remedies that may be provided under these Terms or otherwise, Rimage may terminate the Order with immediate effect upon written notice to Seller if Seller has not performed or complied with the Order, in whole or in part. If Seller becomes insolvent, is generally unable to pay, or fails to pay, its debts as they become due, files a petition for bankruptcy, or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors, then Rimage may terminate the Order upon written notice to Seller. If Rimage terminates the Order for any reason, Seller's sole and exclusive remedy is payment for the Products received and accepted by Rimage prior to the termination.

16. Waiver. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Order, no failure or delay in exercising any right, remedy, power, or privilege arising from the Order shall operate or be construed as a waiver thereof.

17. Confidential Information. All non-public, confidential, or proprietary information of Rimage, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Rimage to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or medium, and whether or not marked, designated, or otherwise identified as "confidential," in connection with the Order is confidential, may only be used for the purpose of performing the Order and may not be disclosed unless authorized by Rimage in writing. Upon Rimage's request, Seller shall promptly return all documents and other materials received from Rimage. Rimage shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

18. Force Majeure. No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached the Order, for any failure or delay in fulfilling or performing any term of the Order, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, explosion, earthquake, epidemics, or pandemics; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of the Purchase Order; or (f) national or regional emergency. The Impacted Party shall give notice within 5 days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains

uncured for a period of 10 days following written notice given by it under this Section, the other party may thereafter terminate this Agreement upon written notice.

19. Assignment. Seller shall not assign, transfer, delegate, or subcontract any of its rights or obligations under the Order without the prior written consent of Rimage. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Seller of any of its obligations hereunder. Rimage may at any time assign, transfer, delegate, or subcontract any or all of its rights or obligations under the Order without Seller's prior written consent.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in the Order shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. The Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing in the Order, express or implied, is intended to or shall confer upon any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Order. Notwithstanding the immediately preceding sentence, the parties hereby designate Indemnitees as third-party beneficiaries of Sections 12 and 13, having the right to enforce those Sections.

22. Governing Law and Venue. All matters arising out of or relating to each Order shall be governed by the laws of the State of Minnesota without regard to conflicts of laws provisions thereof. The jurisdiction and venue for actions related to the subject matter hereof shall be the Minnesota state and U.S. federal courts located in Hennepin County, Minnesota, and the parties irrevocably consent to the personal jurisdiction of such courts.

23. Cumulative Remedies. The rights and remedies under each Order are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties, or otherwise. Notwithstanding the foregoing, the parties intend that, if Rimage terminates the Order in accordance with Section 15, Seller's sole and exclusive remedy is the right to payment for the Products received and accepted.

24. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth in the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), email, or certified or registered mail (return receipt requested, postage prepaid). Except as otherwise provided in the Order, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

25. Severability. If any term or provision of the Order is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of the Order or invalidate or render unenforceable such term or provision in any other jurisdiction.

26. Survival. Subject to the limitations and other provisions of the Order: (a) the representations and warranties of the parties contained in the Order shall survive its expiration or earlier termination; and (b) the following provisions, as well as any other provision that, to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of the Order: Warranties, General Indemnification, Intellectual Property Indemnification, Confidentiality, Governing Law and Venue, and Survival.