

## Terms and Conditions of Purchase

Last Updated March 21, 2017

1. **DEFINITIONS.**
  - (a) "**Jive**" means Jive Software, Inc., unless otherwise specified in this Order.
  - (b) "**Product(s)**" means all good(s), service(s), or both, as described in this Order.
  - (c) "**Purchase Order**" or "**Order**" means an order from Jive in Jive's standard format for the provision of Product(s), which incorporates and is subject to these Jive Terms and Conditions of Purchase.
  - (d) "**Vendor**" means the party that accepts Jive's Order.
2. **ACCEPTANCE OF ORDER.** Placement of this Order constitutes an offer to purchase the Product(s) subject to the instructions, terms and conditions stated in this Order. Vendor's acceptance of this Order shall form a contract and is expressly limited to the instructions, terms and conditions stated in this Order. Vendor's commencement of performance under this Order shall constitute Vendor's unconditional acceptance of this Order. Jive hereby objects to and rejects all terms and conditions contained in any Vendor quotation (unless Jive expressly agrees by referencing such quotation on the Order), acknowledgment, confirmation, invoice, counteroffer and any other forms, which are additional to or different from those stated in this Order. By accepting this Order, Vendor agrees that all such additional or different terms and conditions are ineffective.
3. **PRICE AND PAYMENT.**
  - (a) **Price.** The price charged for each Product ordered shall be the lower of (i) the price stated in this Order, or (ii) the price in effect on the date of delivery for the same or similar Product(s) of like quantity and quality.
  - (b) **Price Warranty.** Vendor warrants that the prices and discounts extended under this Order are no less favorable than those charged and provided by Vendor in an equivalent transaction with another purchaser under similar conditions.
  - (c) **Payment.** Unless specified otherwise in this Order, Jive will pay the purchase price no later than 45 days after receipt of proper invoice, or no later than 45 days after Jive' receipt and acceptance of the Product, whichever is later.
  - (d) **Taxes.** Unless exempt, Jive will bear all sales, VAT and use taxes properly imposed by international, national, federal, municipal or other local authorities in respect to this Order, insofar as such taxes are invoiced by Vendor. Vendor shall be liable for all other taxes and duties. Vendor shall promptly notify Jive in writing of any proposed or contemplated assessment of additional taxes to be borne by Jive as the result of any audit or other tax review by an applicable government agency, prior to Vendor's payment of such taxes. Jive' obligation to pay such additional tax is subject to such notification, which shall permit Jive to review the findings of the alleged tax increase prior to Vendor's payment. Vendor shall take all necessary steps to secure the refund of all taxes paid by Jive that are subsequently deemed inapplicable. If Jive is required by law to withhold taxes from amounts owing under this Order, payments to Vendor will be net of such tax withholdings. Jive will not reimburse Vendor for taxes withheld. If Vendor is exempt from tax or is eligible for a reduced rate of withholding tax pursuant to an income tax treaty, Vendor is responsible for completing and providing documentation (i.e. W-9 for US corporations, W-8BEN for non-US corporations) ("**Tax Documentation**") to Jive. Jive will withhold income taxes at the maximum jurisdictional tax rate from all payments to Vendor until all necessary Tax Documentation is provided. Upon request, Jive will provide Vendor with annual documentation of taxes remitted to taxing authorities.
4. **DELIVERY.**
  - (a) **Delivery Schedule.** Time is of the essence in performance of Vendor's obligations under this Order. If Vendor fails to meet the delivery schedule specified in this Order, Jive, in addition to its other rights and remedies, may require Vendor to deliver the Product(s) in any manner necessary to expedite delivery. Vendor will pay the difference between normal freight and any premium rates required. Vendor shall notify Jive as soon as Vendor is aware that it will not meet the scheduled delivery date. Invoices received covering Product(s) delivered in advance of dates specified will not be paid until the appropriate period after the date specified for delivery unless Jive has specifically authorized in writing such advance shipment.
  - (b) **Packing and Shipment.** Deliveries shall be made as specified, without charge for boxing, crating, carting or storage. Vendor shall pack Product(s) to ensure against damage from weather or transportation and in accordance with the requirements of common carriers. Jive' Order number, line item number and the price, quantity, Vendor part number and Jive part number of the Product(s), as listed on this Order, shall be plainly marked on all invoices, packages, bills of lading, shipping orders and packing lists. Packing lists shall accompany each box or package shipment. Vendor will package all Product(s) that are static-sensitive in a manner consistent with industry standards for protection against electrostatic discharge. All Product packaging supplied by Vendor shall be made from materials that do not utilize chlorofluorocarbons in the manufacturing process. Jive may return to Vendor without charge any Product not properly packaged. Vendor will promptly replace such Product with a properly packaged Product.
  - (c) **Risk of Loss and Title.** Unless otherwise specified in this Order, risk of loss and title to the Product(s) provided under the Order shall pass to Jive upon delivery of the Product(s) by Vendor to the common carrier. Nothing in this Order shall be deemed to be any acceptance by Jive that any Product is of merchantable quality or fit for the purpose for which the Product is intended, and the rights of Jive in this regard shall not in any way be prejudiced.
5. **REPRESENTATIONS & WARRANTIES.** Without prejudice to Jive' other rights and remedies, Vendor represents and warrants that, upon delivery, and for a minimum of 1 year following Jive' acceptance of any good(s), such good(s) shall be free from defects in material and workmanship and shall conform to the attached or referenced specifications or, if none attached or referenced, with all applicable specifications of Vendor. Vendor shall promptly repair or replace nonconforming good(s) at its sole expense (including all transportation costs). Without prejudice to Jive' other rights and remedies, Vendor represents and warrants that (a) the service(s) shall not be in violation of any applicable law, rule or regulation; (b) the service(s) and any designs or Products resulting from such service(s) will not violate or in any way infringe upon the rights of third parties, including property, contractual, employment, trade secrets, proprietary information and non-disclosure rights, or any trademark, copyright or patent rights; (c) Vendor will use sound and professional principles and practices in accordance with generally accepted industry standards in the performance of service(s) under this Order; (d) the performance of Vendor' s personnel will reflect their best professional knowledge, skill and judgment; (e) any designs or Products resulting from Vendor' s service(s) will conform to all applicable specifications. If any failure to meet the representations and warranties for service(s) contained in this section appears within 1 year after Jive accepts the service(s), Vendor will again perform at its sole expense the service(s) directly affected by such failure. If Vendor is unable to re-perform service(s) to Jive' satisfaction, Vendor shall refund to Jive the fees paid to Vendor by Jive for such service(s). Vendor's warranty for defective or negligently performed service(s) shall be limited to the cost of re-performing such service(s).
6. **RETURN MATERIAL AUTHORIZATION.** If Vendor uses a return material authorization in connection with the return of a defective Product, Vendor shall give such authorization to Jive within 2 business days of Vendor' s receipt of Jive' notice that it intends to return the Product.
7. **CHANGES.** Any changes in specifications, terms and conditions, or delivery shall be made only with the written consent of an authorized representative of Jive.
8. **STOP WORK ORDER.** Jive may at any time, by providing a written order to Vendor, require Vendor to stop all or any part of work called for by this Order ("**Stop Work Order**") for up to 90 days, plus any additional period to which the parties may agree. No later than 90 days after Vendor's receipt of such written order, or no later than the expiration of any mutually agreed extension period, whichever is later, Jive shall without any liability either: (a) cancel the Stop Work Order and direct Vendor to resume work or (b) terminate this Order or the work covered by this Order.
9. **CANCELLATION.**
  - (a) **For Convenience.** Jive may, without any penalty, charge or liability, cancel this Order or any part of this Order prior to delivery of the good(s) to be cancelled, or of any service(s) at any time, by serving upon Vendor a written notice.
  - (b) **For Cause.** Without prejudice to Jive' other rights and remedies, Jive may cancel this Order or any part of this Order at any time, without any penalty, charge or liability, if any of the following events occur: (i) Vendor fails to make delivery in accordance with the schedule specified in this Order, (ii) in the event of any proceeding by or against Vendor in bankruptcy or insolvency or for appointment of a receiver or trustee or an assignment for the benefit of creditors or (iii)

Vendor otherwise fails to comply with any other provision of this Order and such failure is not remedied within 10 days after Jive' notice thereof to Vendor.

10. **JIVE' PROPERTY.**

- (a) **Intellectual Property.** Jive shall own all right, title and interest in the Property, whether the Property is developed solely by Vendor or with the aid and assistance of Jive personnel or resources. The term "Property" means all materials and information conceived or developed in whole or in part by Vendor as a result of this Order. Without limiting the prior sentence, the term "Property" includes such materials and information in all forms including, without limitation, specifications, data, documents, drawings, files, input and output materials, media, ideas, inventions, derivatives of pre-existing copyrighted works, software in any format, documentation, and any related material. The term "Property" does not include any of Vendor's pre-existing intellectual property, or any materials or information developed by Vendor while performing work wholly unrelated to this Order. Any tangible expression of the Property which qualifies as a "work made for hire" under the Copyright Act, 17 U.S.C. §101, is expressly agreed by the parties to be a "work made for hire" with the copyright in the work owned by Jive. In addition, Vendor agrees to assign and does hereby expressly assign to Jive all right, title and interest to the Property including, without limitation, all copyrights, copyright applications, rights of reproduction, patent applications, rights of priority, patents, and trade secrets. Where assignment of any intellectual property rights in the Property is required by law to be in writing by Vendor, Vendor shall promptly deliver such written assignment to Jive upon Jive' request. Vendor shall label all Property with a notice of Jive' ownership in a form satisfactory to Jive.
- (b) **Special Tools.** If the price stated includes, as a separate item, the cost of any special tools acquired by Vendor for the purpose of filling this Order, such special tools shall become the property of Jive and shall be properly and permanently identified by Vendor as such. Such special tools shall be disposed of as Jive directs. Vendor shall, to Jive' reasonable satisfaction, provide proper storage and maintenance of such special tools while in possession of Vendor. Jive may inspect Vendor's facilities to assure compliance with this provision.
- (c) **Jive Furnished Materials.** Vendor assumes all risk of loss or damage, howsoever arising, of all material furnished by Jive to Vendor for use in performance of this Order.

11. **WORK ON JIVE' PREMISES.** If Vendor's performance of this Order involves work by Vendor on Jive' premises, Vendor shall (a) provide all necessary and sufficient safeguards and take all proper precautions against the occurrence of injury to any person or damage to any property, and shall be responsible for and shall indemnify, defend, and hold harmless Jive, its directors, officers, employees and agents from any and all loss, suit, action or claim, including costs and legal fees, by reason of injury, including death, to any person or damage to property arising from or in connection with such performance; and (b) procure and carry commercial general liability insurance with limits of liability not less than \$1,000,000 per occurrence, with contractual liability endorsement and adequate employer's liability insurance which, where relevant, should be at least equal to any amount required under any worker's compensation act or other law, regulation or ordinance that may apply. Vendor shall also carry insurance covering the operation of Vendor's vehicles used in the performance of Vendor's operations. Compliance with these insurance requirements shall be verified by a Certificate of Insurance with appropriate endorsements sent to Jive prior to Vendor commencing work on Jive' premises.

12. **COMPLIANCE WITH LAWS AND REGULATIONS.**

- (a) **Compliance with Laws.** Vendor shall comply with all applicable international, national, federal, state, and local laws, rules and regulations, including any. Vendor shall indemnify, defend and hold harmless Jive and its customers for loss or damage sustained because of Vendor's noncompliance with any laws. Product(s) supplied under this Order shall be (and without limitation shall be accompanied by such operating and other instructions and information about any risk to life, health, safety or the environment arising out of their transport, handling, storage and use as are necessary for them to be) safe and free from defects and in accordance with transportation, environmental and consumer protection legislation. Vendor
- (b) **Additional Terms.** If any Product under this Order is purchased pursuant to, or for incorporation into products sold under, a United States Government contract or subcontract, the terms required to be inserted in this Order by that contract or subcontract shall be deemed to be a part of the terms and conditions of this Order and amended accordingly.
- (c) **Vendor Furnished Information.** Vendor shall furnish to Jive all information required by Jive to enable Jive to comply with the requirements of any government agency.

13. **COMMITMENT TO AFFIRMATIVE ACTION/EO.** Jive is an affirmative action, equal opportunity employer and conforms to all applicable employment-related legal requirements. Vendor agrees to seek qualified handicapped, veteran, minority and female individuals to perform service(s) for Jive and further agrees that the individuals assigned to Jive by Vendor will be selected without regard to race, color, sex, sexual orientation, religious creed, national origin, ancestry, marital status, medical condition or physical handicap. **Without limiting the foregoing, both parties agree to comply, to the extent applicable, with the provisions outlined in (i) the Equal Opportunity Clauses of Executive Order 11246, (41 CFR 60-1.4); (ii) section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), which prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities; and (iii) section 4212 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-300.5(a)), which prohibits discrimination against qualified protected veterans and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans, as well as any other regulation pertaining to these orders.**

14. **INDEMNITIES AND LIMITATION OF LIABILITY.**

- (a) Vendor shall indemnify, defend, and hold harmless Jive from and against any and all loss of whatsoever nature (including, but not limited to, direct, indirect, economic and consequential losses) and from and against any and all damages, costs, awards, proceedings, claims, demands, expenses (including legal expenses) and inconvenience incurred by or taken against Jive as a result of the negligence, fault, error, omission, act, or breach of this Order, by Vendor, its employees, its staff, its contractors, its agents, its representatives, or any combination of the foregoing parties.
- (b) JIVE SHALL NOT BE LIABLE FOR ANY SUITS, CLAIMS, JUDGMENTS, AWARDS, EXPENSES, COSTS (INCLUDING LEGAL COSTS), DAMAGES, PROCEEDINGS OR LOSSES, OF WHATSOEVER NATURE HOWSOEVER ARISING (COLLECTIVELY "**DAMAGES**") INCURRED BY VENDOR OR ANY OTHER PERSON PURSUANT TO THIS ORDER (INCLUDING WITHOUT LIMITATION, ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES, LOSS OF BUSINESS, REVENUE OR PROFITS, LOSS OF USE OF DATA, LOSS OF REPUTATION OR GOODWILL OR ECONOMIC LOSS), EVEN IF JIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL JIVE' OR ANY OF ITS LICENSORS' LIABILITY UNDER THIS ORDER EXCEED THE AMOUNT OF FEES PAID BY JIVE UNDER THIS ORDER.

15. **CONFIDENTIALITY; PUBLICITY; PRIVACY.**

- (a) As part of fulfilling this Order, Vendor may have access to confidential information regarding Jive and other parties. Vendor agrees (i) to maintain in confidence all such information acquired from Jive, (ii) not to disclose any such information to anyone except Vendor's employees authorized to receive it and third parties to whom such disclosure is specifically authorized in writing by Jive, and (iii) not to use Jive confidential information for any purpose other than that for which it is disclosed.
- (b) Information considered confidential by Jive includes, without limitation, (i) matters of a technical nature such as trade secret processes or devices, know-how, data, formulas, inventions (whether or not patentable or copyrighted), training materials, specifications and characteristics of products planned or being developed, and research subjects, methods and results, (ii) matters of a business nature such as information about costs, profits, pricing policies, markets, sales, Vendors, customers, employees, product plans, and marketing plans or strategies, (iii) other information of a similar nature not generally disclosed by Jive to the public, and (iv) confidential information of Jive' customers or third parties disclosed to Jive.
- (c) The obligations imposed by this Section 15 shall not apply to any information that (i) is placed in the public domain by Jive by affirmative action and not by inadvertence, (ii) is independently developed by Vendor without access to such confidential information, or (iii) is approved for release in writing by an authorized representative of Jive.
- (d) All confidential information and copies shall remain the property of Jive and shall be destroyed or returned to Jive, upon Jive' written request or upon the

completion of any service(s) for which such confidential information was provided, whichever is sooner. An authorized representative of Vendor shall certify such return or destruction of all confidential information provided by Jive upon request.

- (e) The terms of this Section 15 will survive the fulfillment, expiration or termination of this Order.
- (f) Unless otherwise agreed in writing by authorized representatives of Jive and Vendor, no commercial or technical information disclosed in any manner or at any time by Vendor to Jive shall be deemed secret or confidential, and Vendor shall have no rights against Jive with respect to such information, except such rights as may exist under any applicable intellectual property law.
- (g) Vendor shall not use the name, trademark or trade name of Jive in publicity releases or advertising or in any manner, including, without limitation, customer lists, without the prior written approval of Jive.
- (h) Vendor will ensure that each of its employees, contractors, agents and representatives will comply with the provisions contained in this Section 15, and Vendor shall be liable if any of these parties breach or cause a breach of this Section 15.
- (i) As a result of this Order, Vendor and Vendor's Affiliates may obtain certain information relating to identified or identifiable individuals ("Personal Data"), and such Personal Data shall be considered Jive Confidential Information. Vendor shall have no right, title or interest in Personal Data obtained by it as a result of this Order.
- (j) Vendor shall, and shall ensure that any Vendor's Affiliates with access to Personal Data: (a) collect, access, maintain, use, process and transfer Personal Data in accordance with the requirements set forth in this Section and for the sole purpose of performing Vendor's obligation under this Order; (b) comply with Jive's instructions regarding Personal Data, as well as all applicable laws, regulations and international accords, treaties, or accords, including without limitation, the EU/US Privacy Shield program (collectively, "Legal Requirements"), and refrain from engaging in any behavior which renders or is likely to render Jive in breach of same; (c) promptly notify Jive of any requests from an individual with respect to Personal Data, and work with Jive to promptly and effectively handle such requests; and (d) when data is received directly or indirectly from the European Economic Area or from Jive's European affiliates or customers, abide by the Privacy Shield Principles located at <https://www.privacyshield.gov/> as may be amended from time to time (the "Privacy Shield Principles").
- (k) Vendor shall take all appropriate legal, organizational and technical measures to protect against unlawful and unauthorized processing of Personal Data or Jive's confidential information ("Confidential Data"). Vendor shall maintain reasonable operating standards and security procedures, and shall use its best efforts to secure Confidential Data through the use of appropriate physical and logical security measures including, but not limited to, appropriate network security and encryption technologies, and the use of reasonable user identification or password control requirements, including multiple-factor authentication, strong passwords, session time-outs, and other security procedures as may be issued from time to time by Jive. If requested by Jive at any time during the term of this Order, Vendor shall provide Jive with a copy of Vendor's then current security policy. Vendor shall promptly notify Jive in the event that Vendor learns or has reason to believe that any person or entity has breached or attempted to breach Vendor's security measures, or gained unauthorized access to Confidential Data ("Information Security Breach"). Upon any such discovery, Vendor will (a) investigate, remediate, and mitigate the effects of the Information Security Breach, and (b) provide Jive with assurances reasonably satisfactory to Jive that such Information Security Breach will not recur. If Jive determines that notices (whether in Jive's or Vendor's name) or other remedial measures (including notice, credit monitoring services, fraud insurance and the establishment of a call center to respond to customer inquiries) are warranted following a Security Breach, Vendor will, at Jive's request and at Vendor's cost and expense, undertake the aforementioned remedial actions
- (l) In the event of an investigation by a data protection regulator or similar authority regarding Personal Data, Vendor shall provide Jive with reasonable assistance and support, including, where necessary, access to Vendor's premises to the extent needed to respond to such investigation. In the event that Vendor is unable to comply with the obligations stated in this Section. Vendor shall promptly notify Jive, and Jive may do one or more of the following: (i) suspend the transfer of Personal Data to Vendor; (ii) require Vendor to cease processing Personal Data; (iii) demand the return or destruction of Personal Data; or (iv) immediately terminate this Order. Upon termination of this Order for any reason, Vendor shall promptly contact Jive for instructions regarding the return, destruction or other appropriate action with regard to Personal Data.

#### 16. **PATENTS, COPYRIGHTS, TRADE SECRETS AND OTHER PROPRIETARY RIGHTS.**

- (a) **Warranty of Noninfringement.** Vendor warrants that the Product(s) (including without limitation each component and any unit or part thereof) provided under this Order, and the use thereof, will not infringe upon or violate any patent, copyright, trade secret or any other proprietary right of any third party.
- (b) **Indemnification.** In the event of any claim by a third party against Jive asserting or involving a patent, copyright, trade secret, or proprietary right violation involving any Product(s) acquired by Jive under this Order, Vendor will defend, at its expense, and will indemnify and hold harmless Jive against all loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful, provided that Vendor is notified by Jive in writing within a reasonable time after Jive first receives written notice of any such claim, action, or allegation of infringement (provided that Jive' failure to give such notice, or any delay in giving such notice, shall not relieve Vendor of its indemnification obligations except to the extent Vendor is actually prejudiced by any such failure or delay).
- (c) **Injunction.** In the event an injunction or order is obtained against Jive' use of the Product(s) by reason of any infringement allegation, or if in Vendor' s opinion the Product(s) is likely to become the subject of a claim of infringement or violation of a patent, copyright, trade secret or other proprietary right of a third party, Vendor shall, at its option and its expense: (i) procure for Jive the right to continue using the Product(s), (ii) replace or modify the same so that it becomes noninfringing (which modification or replacement shall not adversely affect the specifications for or the use or operation by Jive of the Product(s)), or (iii) if neither (i) nor (ii) above is reasonably available, remove the Product(s) and all other Vendor-provided products with which the infringing Product(s) is integrated, refund the price and all associated transportation costs paid for such Product(s) by Jive, and secure a release of Jive from any further liability.

#### 17. **MISCELLANEOUS PROVISIONS.**

- (a) **Force Majeure.** Neither party shall be liable for delays or defaults due to unforeseeable causes beyond the reasonable control (and without the fault or negligence) of the party incurring such delay. Vendor shall notify Jive in writing of the existence of such cause immediately after the commencement of the delay or default.
  - (b) **Governing Law.** This Order shall be governed by the laws, excluding choice of law rules, of the State of California. Any dispute arising under this Order shall be subject to the exclusive jurisdiction of the courts in the State of California.
  - (c) **Non-Assignment.** This Order is not assignable in whole or in part by Vendor without the prior written consent of Jive.
  - (d) **Non-Waiver.** The failure of either party to exercise any of its rights under this Order shall not constitute a waiver of such rights.
  - (e) **Severability.** If any provision of this Order is held by a court of competent jurisdiction to be void, invalid, unenforceable or illegal, such provision shall be severed from this Order and the remaining provisions will remain in full force and effect.
  - (f) **Independent Contractor.** Vendor is an independent contractor for all purposes, without express or implied authority to bind Jive by contract.
18. **PLACEMENT OF ORDERS.** Jive' Orders may be placed in writing or by electronic means. Electronic and facsimile transactions shall be deemed to satisfy any legal formalities requiring that agreements be in writing in accordance with applicable laws.
19. **ENTIRE AGREEMENT.** This Order and any attachment(s) set forth the entire agreement between the parties and supersede all prior and contemporaneous agreements, discussions, oral communications, documentation, correspondence and understandings, express or implied.