

# HARDWARE TERMS

Version: HDSG20

## 1 APPLICABILITY

The terms ("Hardware Terms") shall only be applicable to Agreements which incorporate them by reference, including with the specific version code. Further, the Hardware Terms will apply only to such products and services that are defined as or are labeled as "Hardware" by Descartes in the Order Form. These terms are in addition to any other terms and conditions provided under the Agreement.

## 2 HARDWARE

**2.1 Delivery of Hardware.** Any Hardware purchased or rented by Customer pursuant to an Agreement is delivered by Descartes EXW (Incoterms 2010), Descartes' depot facility or such alternate location as expressly identified in the Agreement. Risk of loss or damage, but not title, in the Hardware passes to Customer on Descartes' EXW (Incoterms 2010) delivery. Should Customer request delivery to a specific location, Descartes may select the method of carriage and it will contract for carriage and/or insurance of the Hardware in transit as agent for the Customer. The Customer will reimburse Descartes for all reasonable expenses (including without limitation those incurred for carriage and insurance) incurred by Descartes in such delivery. Descartes will make commercially reasonable efforts to ensure that delivery is completed by any estimated dates but will not be liable for any loss or damage for its failure to do so. Descartes may effect delivery in one or more installments.

**2.2 Software Embedded in or Provided with Hardware.** To the extent that there is any Software or GLN Services embedded in or provided with the Hardware, the Software or GLN Services shall not be considered part of the Hardware and shall instead be subject to the applicable terms of the Agreement.

**2.3 Title to Hardware.** Title to any Hardware purchased by Customer pursuant to an Agreement will pass to Customer (i) when Descartes receives in full cleared funds all sums due and payable to Descartes in respect of the Hardware; or where expressly indicated in the Agreement (ii) at such time as expressly indicated in the Agreement. Until title to such Hardware has passed to the Customer, or where the Hardware is rented by Customer pursuant to an Agreement, the Customer will hold the Hardware on a fiduciary basis as Descartes' bailee. Customer's right to possession of the Hardware will terminate immediately if there is an Insolvency Event and Customer will immediately return the Hardware to Descartes at Customer's risk and cost.

**2.4 Security Interest.** Descartes reserves, until full payment has been received, a purchase money security interest in the Hardware. Customer agrees to execute any document appropriate or necessary to perfect the security interest of Descartes, or in the alternative, Descartes may file this Agreement as a financing statement and/or chattel mortgage.

**2.5 Return Hardware.** Descartes will accept return of Hardware only if a Return Hardware Authorization has been duly completed by Customer and approved by Descartes. Descartes accepts no returns of any Hardware specifically manufactured for Customer.

Hardware returned to Descartes without a Return Hardware Authorization will be returned at Customer's expense.

**2.6 Limited Hardware Warranty.** The Hardware is sold with a limited term warranty as specified in the Agreement, commencing from the date the Hardware is available for EXW (Incoterms 2010), delivery, against defects or malfunction in normal use for which the Hardware was intended. Descartes warrants that the Hardware conforms to the published specifications for the Hardware and that it is free of defects in materials or workmanship. In the event of a claim for warranty service, Customer shall advise Descartes of the warranty claim with a written description of the problem and the serial number of the Hardware and shall return the Hardware, at the Customer's expense, to the address specified by Descartes for repair or replacement. This warranty shall be void if it is determined that the Hardware has been subject to abuse, used in an environment beyond the manufacturer specifications, or if the defect or malfunction is due to incorrect installation by Customer. Descartes' entire liability for the Hardware and the Customer's sole and exclusive remedy in connection with this warranty shall be at Descartes discretion to either (i) repair, or (ii) replace the Hardware in accordance with the foregoing, or, (iii) if Descartes determines that neither repair or replacement is economically viable, then a refund of the purchase price less deduction for fair wear and tear by means of depreciation of the original Hardware purchase price depreciated on a straight line basis over a 36 month period from original date of purchase.

## 3 DEFINITIONS

**3.1 "Effective Date"** means the date that the Agreement becomes effective, as identified in the Agreement and, in the absence of a specific effective date being set out, the date of signature of the Agreement by Descartes.

**3.2 "EXW (Incoterms 2010)"** means the international commercial terms as described by the International Chamber of Commerce.

**3.3 "Order Form"** means any document issued by Descartes and identified as an Order Form, Hardware Purchase Form, or any other similar such ordering document.

**3.4 "Return Hardware Authorization"** means the requisition form provided by Descartes to Customer upon request.

**3.5 "Term"** shall mean the period of time commencing on the Effective Date for which the Agreement is to be in force, as identified in the Agreement.

**3.6 "Use"** means to load, execute, employ, utilize, store or display. Use is deemed to occur where any such process occurs or at any computer terminal or workstation that initiates or is activated by any such process.

[End of terms.]