

These Terms and Conditions of Sale (these "Terms") apply to the purchase and sale of all products by a purchaser (hereinafter, "you" or the "purchaser") from VIVA 5 Corporation or any of its affiliates (collectively, the "Company"). You should review these Terms prior to purchasing any products from the Company. These Terms are subject to change by the Company without prior written notice at any time in the Company's sole discretion. Any changes to these Terms will be in effect as of the "Last Updated Date" referenced on [www.viva5corp.com](http://www.viva5corp.com) (the "Site"), and your submission of an order for products after the "Last Updated Date" will constitute your acceptance and agreement to such changes.

1. Purchase Order Acceptance and Cancellation. You agree that your submission of a purchase order is an offer to buy, under these Terms, all products listed in your order, and the Company will not be obligated to sell the products to you until the Company accepts such purchase order. The Company may choose not to accept purchase orders in its sole discretion. Shipment of products pursuant to a purchase order will be deemed to constitute the Company's acceptance thereof. Purchase orders must include the product/SKU, quantity, delivery method, and delivery location. Terms or provisions included by a purchaser in a purchase order which conflict with these Terms shall be void.
2. Prices and Payment Terms; Security Interest.
  - a. You shall purchase the products at the prices set forth in the Company's published price list in force as of the date that the Company accepts your order. All prices, discounts, and promotions are subject to change at any time without notice. Price increases will only apply to orders accepted after the time of such increase. All prices are exclusive of all sales, use and excise taxes, and any other similar taxes of any kind imposed by any governmental authority on any amounts payable by you. You shall be responsible for all such charges, costs, and taxes, provided that you shall not be responsible for any taxes imposed on or with respect to the Company's income, revenues, gross receipts, personnel, or real or personal property or other assets.
  - b. Terms of payment are within the Company's sole discretion and, unless otherwise agreed by the Company in writing, payment must be received by the Company before its acceptance of an order. Payment for an order must be made by credit card or ACH wire transfer and in U.S. dollars for all purchases. You represent and warrant that (i) the financial information you supply to the Company is true, correct, and complete; (ii) you are duly authorized to use such account for the purchase; (iii) charges incurred by you will be honored by your credit card company or banking institution; and (iv) you will pay charges incurred by you at the invoiced prices, including shipping and handling charges, and all applicable taxes.
  - c. You shall pay interest on all late payments at the lesser of 1.5% per month or the maximum rate permissible under applicable law, calculated daily and compounded monthly. You shall reimburse the Company for all costs incurred in collecting any late payments, including but not limited to reasonable attorneys' fees. Without prejudice to all other remedies available under these Terms or at law, the Company shall be entitled to suspend the delivery of any products if the purchaser fails to pay any amounts when due hereunder.
  - d. In the event the Company determines in its sole discretion to extend credit to you for the purchase of products, you hereby grant to the Company, as collateral security for payment of the purchase price thereof, a security interest in such products, wherever located and whether now existing or hereafter acquired from time to time, and in all accessions thereto and returns or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.
  - e. You shall not withhold payments of any amounts due and payable to the Company be reason of any set-off of any claim or dispute with the Company.
  - f. Except as provided under Section 4(b) with respect to nonconforming products, all sales of products to the purchaser are final and the purchaser has no right to return products purchased under a purchase order to the Company.
3. Shipments; Delivery; Title and Risk of Loss.
  - a. The Company shall arrange for shipment of orders to you. Unless otherwise agreed by the Company in writing, the Company shall deliver the products to you using the Company's standard methods for packaging and shipping such products. You will pay all shipping and handling (and if applicable, insurance) charges unless otherwise agreed by the Company in writing.
  - b. Title and risk of loss pass to you upon the Company's tender of products to the carrier. Shipping and delivery dates are estimates only and cannot be guaranteed.

4. Inspection of Products; Returns of Nonconforming Products.

- a. You shall inspect the products within 10 days of receipt (the "Inspection Period") and shall be deemed to have accepted the products unless you notify the Company in writing of any nonconforming products during the Inspection Period and provides such documentation or other evidence thereof as required by the Company. If you fail to so notify the Company during the Inspection Period, the products shall be deemed accepted by you. For purposes of these Terms, "nonconforming products" shall refer to only the following: (i) products delivered that fail to conform to the Company's specifications or are defective; or (ii) products for which the product label or packaging incorrectly identifies its contents; or (iii) shortage in quantity of products delivered under an accepted purchase order.
- b. If you timely notify the Company of any nonconforming products, the Company shall, in its sole and absolute discretion: (i) replace such nonconforming products with conforming products; or (ii) credit or refund the purchase price for such conforming products. You shall ship, at Company's reasonable expense, the nonconforming goods to the Company to such address as the Company shall provide to you in writing with risk of loss transferring to Company upon delivery. If the Company exercises its option to replace nonconforming goods, the Company shall, after receiving the nonconforming goods, ship the replacement products to you at its expense and risk of loss until delivered.
- c. You acknowledge that the remedies set forth in Section 4(b) are your exclusive remedies with regards to delivery of nonconforming products.

5. Intellectual Property; Limited License. The Company hereby grants you a limited, non-exclusive, revocable, non-transferable, and non-sublicensable license to use the Company's name, logo, trademarks, and service marks (collectively, the "Marks") solely in connection with the promotion, advertising, distribution, and sale of the products. No license or rights to the Marks are granted to you by implication, estoppel, or otherwise, other than as expressly granted by the Company under this Section 5. The Company may revoke the licenses granted herein at any time in its sole discretion in writing.

6. Limited Warranty; Disclaimer.

- a. The Company warrants to the purchaser that during the Warranty Period the products will be free from defects in material and workmanship and will conform to the Company's published specifications in effect as of the date of manufacture. For purposes of this Section 6(a), "Warranty Period" for each product shall commence on the date of the purchase order therefor and continue to and through the printed expiration date for such product.
- b. EXCEPT AS PROVIDED IN SECTION 6(a) ABOVE, THE COMPANY MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF TRADE, OR OTHERWISE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED.
- c. THE REMEDY PROVIDED IN SECTION 4(b) ABOVE SHALL BE THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 6(a).

7. Limitation of Liability.

- a. IN NO EVENT SHALL THE COMPANY BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b. IN NO EVENT SHALL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO YOUR PURCHASE OF PRODUCT UNDER A PURCHASER ORDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE COMPANY FOR SUCH PRODUCT SOLD UNDER THE APPLICABLE PURCHASE ORDER.

8. Force Majeure. The Company shall not be liable or responsible to you for any failure or delay in fulfilling or performing any of its obligations under these Terms to the extent such failure or delay is caused by or results from acts or circumstances beyond the Company's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, governmental actions, terrorist threats or acts, civil unrest, national emergency, epidemic, pandemic, lockouts, strikes or other labor disputes, or restraints or delays affecting carriers, or inability or delay in obtaining supplies of adequate or suitable materials.

9. **Privacy.** The Company respects purchasers' privacy and is committed to protecting it. The Company's Privacy Policy governs the processing of all personal data collected from you in connection with your purchase of products from the Company.
10. **Relationship Between the Parties.** The relationship between you and the Company is that of independent contractors. Nothing in these Terms 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.
11. **Entire Agreement.** These Terms, as may be amended from time to time, represent the entire agreement between you and the Company with respect to the subject matter hereof and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.
12. **No Waiver.** No waiver by the Company of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by the Company. No failure to exercise or delay in exercising any right, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
13. **Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of Florida without regard for conflict of laws principles.
14. **Arbitration; Class Action Waiver.**
  - a. If not resolved through negotiation, any dispute between you and the Company arising under, out of, or in relation to these Terms must be submitted to binding arbitration under the authority of the Federal Arbitration Act and must be determined by arbitration administered by the American Arbitration Association pursuant to its then-current commercial arbitration rules and procedures, including procedures for emergency relief. Any arbitration must be on an individual basis and the parties have no authority or power to proceed with any claim as a class action or otherwise to join or consolidate any claim with any other claim or any other proceeding involving third parties. The arbitration must take place in Broward County, Florida. The arbitrator must follow the law and not disregard the provisions of these Terms. A judgment may be entered upon the arbitration award by any state or federal court of competent jurisdiction. The decision of the arbitrator will be final and binding on all parties to the dispute; however, the arbitrator may not under any circumstances: (i) assess punitive, exemplary, or consequential damages; or (ii) make any award which extends, modifies, or suspends any lawful provision of these Terms or any reasonable standard of business performance that the Company sets. The arbitrator, and not a court, shall have the exclusive authority to resolve any dispute over the enforceability of all or any part of this Section 14. In the event that any one or more provisions of this Section shall be or become invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Section shall not be affected thereby.
  - b. Notwithstanding the foregoing, the parties agree that the provisions of Section 14(a) shall not apply to any action for declaratory or equitable relief, including but not limited to seeking preliminary or permanent injunctive relief, specific performance, or other relief in the nature of equity to enjoin any harm or threatened harm to a party's tangible or intangible property, brought at any time, including, without limitation, prior to or during the pendency of any arbitration proceedings initiated hereunder.
15. **Your Comments and Questions.** Any questions and comments regarding these Terms should be directed to: [salesupport@viva5corp.com](mailto:salesupport@viva5corp.com).