



## Purchase Terms and Conditions

GreenBytes products and services include hardware equipment ("Hardware") and software in any form ("Software") (each and collectively "Product" or "Products"), and support ("Support"), installation services ("Installation Services") and professional services ("Professional Services") (each and collectively "Service" or "Services").

The use of Products and Services by any person or entity ("Customer") is governed solely by this agreement ("Agreement") which consists of: (i) the Quote (defined below); (ii) these Purchase Terms and Conditions, including attachments ("Purchase Terms and Conditions"); (iii) any separate clickwrap agreement or terms in any Software installation or download ("Click-wrap"); and (iv) GreenBytes's End User License Agreement ("GB EULA"), which if not attached hereto may be found at [www.getgreenbytes.com/schedules/](http://www.getgreenbytes.com/schedules/). If there is a conflict among any of the foregoing, priority shall be given in order to the: Quote, GB EULA and Purchase Terms and Conditions. As used in this Agreement, "GreenBytes" means GreenBytes, Inc. and/or one of its affiliates as per the applicable Quote.

- 1. ORDERING.** GreenBytes may submit a quote to Customer containing quantity, pricing and other ordering information ("Quote"). Customer will be deemed to have accepted a Quote when Customer either: (i) signs and returns the Quote; (ii) issues a purchase order ("PO") per the Quote; or (iii) sends GreenBytes an email or other written acceptance referring to the Quote. The foregoing is an "Order." Customer agrees that any terms and conditions inconsistent with or in addition to this Agreement, including without limitation any PO terms and conditions, are rejected and null and of no effect, even if GreenBytes accepts, acknowledges or ships Products in response to the Order. Each Order is complete when GreenBytes ships the Products, and for Software provided separately from Hardware when GreenBytes makes the Software available.
- 2. PAYMENT.** GreenBytes will invoice Customer after the Order is complete, and Customer will pay the invoice and pay or reimburse GreenBytes for all related taxes, withholdings, duties and assessments, except for taxes based on GreenBytes's net income. Amounts are due in the currency stated in the Order, as applicable, in full 30 days after the date of invoice, with interest accruing thereafter at the lesser of 1.5% per month or the maximum permitted by law. Payment shall be made free of any currency controls or other restrictions, by check or wire transfer, to the address or bank account designated by GreenBytes. GreenBytes may suspend shipments of Products or performance of Services if Customer fails to make payment when due. GreenBytes reserves and Customer grants to GreenBytes a purchase money security interest in the Products sold and the proceeds thereof until Customer has paid the invoice.
- 3. SHIPMENT.** Shipping terms for orders placed with GreenBytes are: (i) FCA (Incoterms 2000) origin; (ii) GreenBytes will pre-pay and invoice freight to Customer per the applicable quote; and (iii) for shipments outside the United States, Customer is responsible for clearing the goods for import and paying all formalities, duties, taxes, and other charges upon import. Title for the hardware and risk of loss will pass to Customer upon delivery to the carrier at the point of origin. All scheduled shipment dates are estimates only and GreenBytes shall not be obligated to incur any expedited delivery charges, and GreenBytes is not liable for any loss or damage or penalty resulting from delay.
- 4. SOFTWARE.** Software is licensed to Customer, not sold. Terms such as "sell" and "purchase" apply only to the extent the Products consist of Hardware items other than Software. By using any Software, Customer agrees to be bound by and abide by the terms of the GB EULA. GreenBytes grants Customer a limited, personal, non-sublicensable, non-transferable, non-exclusive license to use the Software only for Customer's internal use as part of the Product in which it is contained or for which it is provided and only in accordance with GreenBytes's official documentation. Customer expressly acknowledges and agrees that Customer has no right to and Customer will not sell, transfer, or license any Software to any third party. This Agreement does not give Customer any rights not expressly granted herein.
- 5. SOFTWARE RESTRICTIONS.** Customer will not, nor permit anyone else to, directly or indirectly: (i) copy, modify, or distribute the Software; (ii) reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure of the Software (except to the extent the foregoing is expressly prohibited by applicable local law); (iii) rent, lease, or use the Software for timesharing or service bureau purposes, or otherwise on behalf of any third party; or (iv) use the Software for comparisons or "benchmarking" except for Customer's confidential internal purposes or publish or disclose the results thereof. Customer will maintain and not remove or obscure any proprietary notices on the Software. As between Customer and GreenBytes, title, ownership rights, and intellectual property rights in and to the Software, and any copies or portions thereof, shall remain with GreenBytes and GreenBytes's suppliers or licensors. The Software is protected by copyright laws and treaties. The Software may be distributed with certain independent code that is licensed under separate licenses including the ("CDDL") Common Development and Distribution License and/or other open-source licenses ("Open-Source Code"). Any such Open-Source Code is licensed to Customer in accordance with the applicable licenses.
- 6. SERVICES.** Customer is not entitled to Services unless Customer has ordered and paid for Services. GreenBytes's obligations with respect to Support, Installations Services and Professional Services, which if not attached hereto may be found at [www.getgreenbytes.com/schedules/](http://www.getgreenbytes.com/schedules/), and are hereby incorporated into and made part of these Purchase Terms and Conditions.



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7. **LIMITED WARRANTIES.** GreenBytes's Limited Warranties, which if not attached hereto may be found at [www.getgreenbytes.com/schedules/](http://www.getgreenbytes.com/schedules/), are hereby incorporated into and made part of these Purchase Terms and Conditions.

8. **INDEMNIFICATION.** GreenBytes will defend or settle any action brought against Customer by a third party to the extent it is based upon: (a) a claim for death or bodily injury or damage to tangible property resulting from negligent acts or willful misconduct by GreenBytes or GreenBytes's employees or subcontractors in performing Services at Customer's facility; or (b) a third-party claim that a Product infringes any patent or copyright of any country that is a signatory of the Berne Convention or misappropriates any trade secret. GreenBytes will pay any costs and damages made in settlement or awarded against Customer in final judgment resulting from the claim, provided Customer: (i) gives GreenBytes prompt written notice of the claim; (ii) gives GreenBytes sole control of the defense and settlement of the claim; and (iii) gives GreenBytes all reasonable information, assistance and authority in connection with the foregoing. GreenBytes will not be bound by any settlement Customer enters into without GreenBytes's prior written consent. GreenBytes will have no obligation under this Section 8 to the extent any claim is based on negligent acts or willful misconduct by Customer or Customer's employees or subcontractors. If the operation of a Product becomes, or GreenBytes believes is likely to become, the subject of such a claim, Customer will permit GreenBytes, at GreenBytes's option and expense, either to secure the right for Customer to continue using the Product or to replace or modify it so that it becomes non-infringing. However, if neither of the foregoing alternatives is available on terms which are reasonable in GreenBytes's judgment, Customer will return the Product upon GreenBytes's written request for a refund of the Product cost, less straight-line depreciation based on a four-year useful life for Hardware and a three-year useful life for Software, and the pre-paid and unused portion of any remaining term of Support for the returned Product. GreenBytes will have no obligation with respect to any such claim that could not be made but for Customer's modification of the Product or its combination, operation or use with any non-GreenBytes apparatus, data or programs outside the typical, recommended or reasonably anticipated use of the Products within their official Product specifications. THIS SECTION 8 STATES GREENBYTES'S ENTIRE OBLIGATION TO CUSTOMER, AND IS CUSTOMER'S SOLE REMEDY, REGARDING INFRINGEMENT BY THE PRODUCTS.

9. **U.S. GOVERNMENT RIGHTS.** The Software is "commercial computer software" as defined in the U.S. Federal Acquisition Regulations ("FAR") at 2.101. If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the "FAR" and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses U.S. Government rights in the Software. Any confidential or proprietary information received by the U.S. Government in connection with this Agreement is exempt from release under the Freedom of Information Act and is prohibited from release under the Federal Trade Secrets Act, 18 U.S.C. 1905.

10. **CONFIDENTIAL INFORMATION.** Each of the parties ("Receiving Party") understands that the other ("Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans), which to the extent previously, presently or subsequently disclosed to the Receiving Party is "Proprietary Information" of the Disclosing Party. Customer agrees that without limitation GreenBytes's Product and Services prices, discounts and proposals to Customer are GreenBytes's Proprietary Information. The Receiving Party agrees: (a) to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials); (b) not to divulge any such Proprietary Information to any third person, except to those of its employees and subcontractors that need to know such Proprietary Information for the purpose of performing this Agreement, provided that each such employee and subcontractor is subject to an agreement that includes binding use and disclosure restrictions that are at least as protective as those set forth herein; (c) not to make any use whatsoever at any time of such Proprietary Information except to perform its obligations under this Agreement; and (d) not to copy or reverse engineer any such Proprietary Information. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document: (i) is or becomes (through no improper action or inaction by the Receiving Party) readily available to the public; (ii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party; (iii) was rightfully disclosed to it by a third party without restriction; or (iv) was independently developed without use of any Proprietary Information of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows the Disclosing Party to participate in the proceeding. To the extent that any of Customer's Proprietary Information includes personally identifiable information, then Customer consents to GreenBytes's use of such personally identifiable information in accordance with GreenBytes's then-current privacy policy.



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11. WARRANTY DISCLAIMER. EXCEPT PURSUANT TO THE LIMITED WARRANTIES DESCRIBED IN SECTION 7, GREENBYTES DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE PRODUCTS OR SERVICES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, RELIABILITY, AND NON-INFRINGEMENT. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO CUSTOMER. GREENBYTES DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.

12. LIMITATION OF LIABILITY. WHETHER UNDER ANY WARRANTY, CONTRACT, TORT, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, THE FOLLOWING WILL APPLY TO GREENBYTES AND ITS AFFILIATES AND ALL PRODUCTS, INCLUDING SOFTWARE, AND SERVICES OF GREENBYTES IN ALL CIRCUMSTANCES (EXCEPT WITH RESPECT TO BODILY INJURY OR DEATH OF A PERSON): (A) GREENBYTES WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUES, LOSS OF PROFITS OR LOSS OR INACCURACY OF DATA; AND (B) GREENBYTES'S CUMULATIVE LIABILITY FOR ANY AND ALL DAMAGES IS LIMITED TO AMOUNTS PAID TO GREENBYTES BY CUSTOMER OR GREENBYTES'S AUTHORIZED RESELLER FOR THE PARTICULAR PRODUCTS AND/OR SERVICES WITH RESPECT TO WHICH A CLAIM IS MADE. GREENBYTES HAS AGREED WITH CUSTOMER THAT THESE LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

13. TERMINATION. BREACH. Each party may terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof. Upon termination of this Agreement: (i) Customer will promptly return to GreenBytes all Proprietary Information; and (ii) Customer will, within 30 days after receipt of GreenBytes's invoice, pay all accrued and unpaid fees and expenses. SURVIVAL. The rights and obligations of the parties contained in Section 4 (unless GreenBytes terminates for Customer's material breach, in which case Section 4 will not survive termination), Section 5, and Sections 8 through 17 (inclusive) will survive the termination of this Agreement.

14. EXPORT COMPLIANCE. Customer will comply with all export laws and regulations of the Applicable Law (as defined in Section 16, below), including without limitation of the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, or other U.S. or foreign agency or authority, and Customer will not export, or allow the export or re-export of any Product in violation of any such laws or regulations. By installing or using any Product, Customer agrees to the foregoing and represents and warrants that Customer is not located in, under the control of, or a national or resident of any restricted country.

15. RESELLER ORDERS. If Customer orders from a GreenBytes authorized reseller, Customer's order is governed by Customer's agreement with the reseller, and this Agreement does not apply to Customer except: (i) Customer's use of Software is subject to the GB EULA; (ii) GreenBytes's obligations and liabilities are subject to the terms, conditions and limitations in Sections 9 through 17 (inclusive); and (iii) GreenBytes' Limited Warranties and (iv) designated GreenBytes Services if reseller purchased and resold to Customer; then the GreenBytes Limited Warranties and designated GreenBytes Services are described in the attachments referenced in Sections 6 and 7, and Customer and the reseller agree to comply with (and which shall be a condition to GreenBytes's obligations) GreenBytes's terms and conditions including without limitation receipt by GreenBytes of payment in full.

16. CHOICE OF LAW/VENUE. This Agreement shall be governed by Rhode Island law if Customer is located in North America, Central America, or South America (the "Americas"), and the laws of England if Customer is located outside of the Americas, without regard to the Uniform Computer Information Transactions Act ("Applicable Law"). Choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply. If Customer is located in the Americas, the parties agree to jurisdiction and venue for claims or actions arising under this Agreement in the state or federal courts located in Rhode Island, USA. If Customer is located outside of the Americas, then any dispute between the parties arising under this Agreement shall be finally settled by binding arbitration in London, England. Such arbitration shall be conducted in English in accordance with the rules of the International Chamber of Commerce by one (1) arbitrator appointed in accordance with such rules. The arbitrator shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy, and cost-effective resolution of the dispute, and shall be expressly empowered to issue appropriate injunctive relief. The award of arbitration shall be final and binding upon both parties, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any monetary award shall be payable in United States dollars. Notwithstanding the foregoing, either party may also seek and obtain appropriate relief in any court of competent jurisdiction for claims regarding (i) the scope of any licenses granted herein or (ii) either party's intellectual property rights and confidential information. The prevailing party in an action to enforce this Agreement shall be entitled to costs and attorneys' and experts' fees and expenses.

17. GENERAL. Customer may not assign any rights or delegate any duties under this Agreement and any attempt to do so is void and without effect. This Agreement is the parties' entire agreement relating to the subject matter hereof and supersedes all prior or contemporaneous oral or



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written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any communication between the parties relating to its subject matter. No modification to this Agreement will be binding unless in writing and signed by an authorized representative of each party. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. To the extent that any and all provisions of this Agreement (including its attachments) shall exclude or limit any statutory liability which, according to mandatory provisions of Applicable Law cannot be contractually excluded or limited by mutual agreement of the parties, then such provision shall be given only such effect, if any, as is permitted by the Applicable Law. Neither party will be responsible for any failure or delay in its performance under this Agreement, excluding Customer's payment obligations, due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, war, terrorism, riot, or natural disasters.

ATTACHMENTS: If not attached, the following may be found at [www.getgreenbytes.com/schedules/](http://www.getgreenbytes.com/schedules/).

- End User License Agreement
- Limited Warranties
- Support Terms and Conditions