

TERMS AND CONDITIONS OF SALE

1. The term "Contract" means the Contract or order confirmation issued by ZIP-net, Inc., the term of this document, these Terms and Conditions of Sale, and all attachments and amendments thereto. Acknowledgement or acceptance of the Contract, performance of any part thereof or acceptance of any Product by Buyer constitutes Buyer's acceptance of all of its terms. Acceptance is limited to the terms and conditions of the Contract. Any proposal for additional or different terms or any attempt by Buyer to vary any of these terms in Buyer's acceptance is hereby objected to and rejected, unless accepted by the ZIP-net, Inc. in writing and includes as an attachment to the Conditions of Sale.
2. The price is exclusive of all federal, provincial, state and local taxes, for which Buyer is responsible. If Buyer is exempt from any such taxes, Buyer will provide to ZIP-net, Inc. current certificates evidencing such exemption. Except in respect of pre-paid good, payment terms will be net 30 days from date of invoice. In the event any invoice is not paid when due, it will be subject to interest at the lesser of 1 ½% per month or the maximum legal rate. In addition to ZIP-net, Inc.'s other rights and remedies hereunder, ZIP-net, Inc. will be entitled to recover from Buyer all costs of collection, including without limitation ZIP-net, Inc.'s attorneys' fees and litigation costs. In the event an invoice is more than 30 days past due, ZIP-net, Inc. will have the right to suspend deliveries until all past due invoices have been paid, or ZIP-net, Inc. at its option may terminate the Contract. If in ZIP-net, Inc.'s reasonable opinion, there is an adverse change to Buyer's financial condition, ZIP-net, Inc. may require adequate assurances of performance be provided by Buyer within 5 days following ZIP-net, Inc.'s request, and if Buyer fails to provide such assurances, ZIP-net, Inc. may withhold further delivery of the Product.
3. ZIP-net, Inc.'s warranty with respect to the product is limited to compliance of the product with the specifications set forth in the contract, and ZIP-net, Inc. makes no other warranties with respect to the product. WITHOUT LIMITING THE FOREGOING, ZIP-NET, INC. MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER IMPLIED OR STATUTORY WARRANTY WITH RESPECT TO THE PRODUCT. Any technical advice furnished or recommendation made by ZIP-net, Inc. concerning any use or application of the product is believed to be reliable, but ZIP-net, Inc. makes no express or implied warranty regarding such advice and recommendations.
4. BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM BY BUYER WITH RESPECT TO THE PRODUCT SUPPLIED BY ZIP-NET, INC. AND/OR ZIP-NET, INC.'S OBLIGATIONS, WHETHER SUCH CLAIM IS BASED UPON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY, IS LIMITED TO REPLACEMENT OF THE PRODUCT WITHOUT CHARGE TO BUYER OR ISSUANCE OF AN APPROPRIATE CREDIT TO BUYER. IN NO EVENT WILL ZIP-NET, INC.'S LIABILITY FOR DEFECTIVE PRODUCT EXCEED THE PURCHASE PRICE THEREOF. IN NO EVENT WILL ZIP-NET, INC. BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OF BUYER. NO CLAIM MAY BE MADE AGAINST ZIP-NET, INC. BY BUYER MORE THAN 30 DAYS FOLLOWING DELIVERY.
5. If the cost of producing storing or handling the Product increases because of factors beyond ZIP-net, Inc.'s reasonable control, including without limitation changes in or imposition of governmental regulation or labor costs, the parties will negotiate in good faith an adjustment to the price of the Product.
6. If, because of any cause or causes beyond the reasonable control and without the intentional fault or negligence of ZIP-net, Inc., including without limitation Acts of God, labor strikes or disturbances (whether or not the demands of the employees are reasonable and within such party's power to concede), unusual weather, interruptions of transportation, interruptions of public utility power facilities embargoes, acts of civil or military authority, war, riots, condemnation or acts of eminent domain or forced sale ZIP-net, Inc., is commercially unable to carry out part or all of its obligations to the other party, and if ZIP-net, Inc. promptly gives to the other party written notice of such event, then the obligations ZIP-net, Inc. shall be suspended to the extent made necessary by such event during the continuance of such event; provided, however, that ZIP-net, Inc. shall use good faith efforts to eliminate such event insofar as possible with minimum of delay.
7. Buyer shall assume all risks and liabilities arising from the use or possession of the Product and Buyer shall indemnify and hold harmless ZIP-net, Inc. and its affiliates from and against any and all claims, losses, liabilities, damages or expenses, including without limitation attorneys' fees, arising from or relating to the handling, storage, sale, delivery or use of the Product.
8. The Contract will be construed in accordance with the internal laws of the Commonwealth of Pennsylvania. No waiver or modification of the Contract will be valid unless in writing and signed by the parties. The failure of either party to insist upon strict adherence to any term hereof on one or more occasions will not be considered a waiver or deprive that party of the right thereafter to insist on strict adherence to that term of any other term. If any provision of the Contract is declared invalid or unenforceable by a court of competent jurisdiction, such provision will be ineffective to the extent of such invalidity or unenforceability, but will not affect any other provisions of the Contract, which will otherwise remain in full force and effect. The terms hereof will inure to and be binding upon Buyer and ZIP-net, Inc. and their heirs, legal representatives, successors and assigns; providing that no part hereof may be assigned by Buyer, by operation of law or otherwise, without ZIP-net, Inc.'s written consent. No information relating to the Contract will be disclosed without Buyer's prior written consent.