



HP SINGLE ORDER TERMS FOR SUPPORT

A. HP BASE TERMS

1. DEFINITIONS

- a. *Affiliate* of a party means an entity controlling, controlled by, or under common control with, that party.
- b. *Deliverable* means the tangible work product resulting from the performance of Support excluding Products and Custom Products.
- c. *Hardware* means computer and related devices and equipment, related documentation, accessories, parts, and upgrades.
- d. *HP Branded* means Products and Support bearing a trademark or service mark of Hewlett-Packard Company or any Hewlett-Packard Company Affiliate.
- e. *Product* means Hardware and Software listed in HP's standard price list at the time of HP's acceptance of Customer order, and including products that are modified, altered, or customized to meet Customer requirements ("Custom Products").
- f. *Software* means machine-readable instructions and data (and copies thereof), and related updates and upgrades, licensed materials, user documentation, user manuals, and operating procedures.
- g. Software License Information ("SLI") is license information that is specific to a Software Product. SLI may be found in a file in the Software Product's directory or as information that accompanies the Software Product or in HP quotations. SLI is available upon request.
- h. *Specification* means technical information about Products published in HP Product manuals, user documentation, and technical data sheets in effect on the date HP delivers Products to Customer.
- i. *Statement of Work* means an executed document so titled, that describes the Custom Support to be performed by HP under the Support Terms section.
- j. *Support* means Hardware maintenance and repair, Software maintenance, training, installation and configuration, and other standard support services provided by HP and includes "Custom Support" which is any agreed non-standard Support as described in a Statement of Work.
- k. *Transaction Document(s)* means an accepted Customer order (excluding pre-printed terms) and in relation to that order valid HP quotations, HP published technical data sheets or service descriptions, HP limited warranty statements delivered with or otherwise made available to Customer with Products, and mutually executed Statement of Work, all as provided by HP, or other mutually executed documents that reference these HP Single Order Terms for Support ("Terms").
- l. *Version* means a release of Software that contains new features, enhancements, and/or maintenance updates, or for certain Software, a collection of revisions packaged into a single entity and, as such, made available by HP to its customers (also called a "Release").

2. PRICES AND TAXES

- a. Prices. Product and Support prices are specified in the current local published HP price list at the time HP receives Customer's order, or in a valid Transaction Document. Prices are subject to change at any time prior to HP's acceptance of Customer's order, unless stated otherwise in a Transaction Document.
- b. Price Validity. Unless prices are changed by HP in accordance with these Terms, prices are valid for the period set forth in a Transaction Document. Product prices for an order remain valid for ninety (90) days from original order date unless otherwise quoted by HP.
- c. Taxes. Prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on HP or on the Customer by any taxing authority (other than taxes imposed on HP's income) related to Customer's order, unless Customer has provided HP with an appropriate resale or exemption certificate for the delivery location. "Delivery location" means the location where HP transfers title or possession of Products to Customer or its designate or the location where Support is performed or, in the case of remote or intangible Support, where the Products being serviced are located.
- d. Withholding Tax. If Customer is required by law to withhold and remit tax relating to Customer's order, Customer shall:
 1. be entitled to reduce the payment by the amount of such tax;
 2. withhold and remit such tax to the applicable tax jurisdiction;
 3. assist HP to obtain the benefit of any reduced withholding tax under applicable tax treaties; and
 4. furnish to HP a tax certificate or other acceptable evidence of payment of such tax as required by the relevant taxing authorities.
- e. Financing. Third party financing transactions require advance notice to HP for appropriate tax treatment.



3. CUSTOMER ORDERS

- a. Orders. Orders will be governed by these Terms and are subject to acceptance by HP. Orders must specify a "ship to" address and have a delivery date within ninety (90) days from the order date unless otherwise provided in a Transaction Document.
- b. Cancellation. Customer may cancel an order for Products (but not Custom Products) at no charge up to five (5) business days prior to the scheduled shipment date.
- c. Extended Delivery Dates. Changes to orders that extend delivery dates beyond ninety (90) days from the order date shall be considered new orders at the prices in effect when HP receives the changed order.

4. DELIVERY

- a. Delivery. HP will deliver Products by arranging shipping to the receiving area at the "ship to" address specified in Customer's order within the country in which HP accepted the order. HP may elect in its sole discretion to deliver Software, Deliverables, Specifications, or Product documentation by enabling electronic transmission to, or electronic access or download by Customer in the country where HP accepted the order.
- b. Delivery Charges. Transportation and handling charges are payable by Customer and will be specified in an HP invoice unless otherwise specified in a Transaction Document. Special packing or shipping arrangements will be charged separately to Customer.
- c. Delivery Requirements. If HP is unable to meet Customer's Product delivery requirements, Customer may cancel that order, and such cancellation is Customer's sole remedy.

5. PAYMENT

- a. Payment Terms. Customer agrees to pay, without offset, all invoiced amounts within thirty (30) days of HP's invoice date. HP may change credit or payment terms for unfulfilled orders if, in HP's reasonable opinion, Customer's financial condition, previous payment record, or relationship with HP merits such change.
- b. Customer Default. HP may discontinue performance if Customer fails to pay any sum due, or if after ten (10) days written notice Customer has not cured any other failure to perform under these Terms.
- c. Security Interest. HP retains a security interest in Products until payment. Customer shall execute any paperwork required by HP to effectuate any such security interest.

6. WARRANTY PROVISIONS

- a. Warranty Statements. HP limited warranty statements for Hardware, Software and Support, as applicable, are contained in their respective sections of these Terms. The limited warranties in these Terms are subject to the terms, limitations, and exclusions contained in the limited warranty statement provided for the Product in the country where that Product is located when the warranty claim is made. A different limited warranty statement may apply and be quoted if the Product is purchased as part of a system.
- b. Transfer. Warranties are transferable to another party for the remainder of the warranty period subject to HP license transfer policies and any assignment restrictions.
- c. Delivery Date. Warranties begin on the date of delivery, or for Hardware on the date of installation if installed by HP. If Customer schedules or delays such installation by HP more than thirty (30) days after delivery, Customer's warranty period will begin on the 31st day after delivery.
- d. Exclusions. HP is not obligated to provide warranty services or Support for any claims resulting from:
 1. improper site preparation, or site or environmental conditions that do not conform to HP's site specifications;
 2. Customer's non-compliance with Specifications or Transaction Documents;
 3. improper or inadequate maintenance or calibration;
 4. Customer or third-party media, software, interfacing, supplies, or other products;
 5. modifications not performed or authorized by HP;
 6. virus, infection, worm or similar malicious code not introduced by HP; or
 7. abuse, negligence, accident, loss or damage in transit, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond HP's control.
- e. Non-HP Branded Products and Support. HP provides third-party products, software, and services that are not HP Branded "AS IS" without warranties of any kind, although the original manufacturers or third party suppliers of such products, software and services may provide their own warranties.
- f. Disclaimer. THE WARRANTIES AND ANY ASSOCIATED REMEDIES EXPRESSED OR REFERENCED IN THESE TERMS ARE



EXCLUSIVE. NO OTHER WARRANTY, WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED BY HP OR MAY BE INFERRED FROM A COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT ALLOWED BY LOCAL LAW HP DISCLAIMS ALL IMPLIED WARRANTIES OR CONDITIONS INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

7. INTELLECTUAL PROPERTY INFRINGEMENT

- a. Third-Party Claims. HP will defend or settle any third party claims against Customer alleging that HP Branded Products or Support (excluding Custom Products and Custom Support) provided under these Terms infringes intellectual property rights in the country where they were sold, if Customer:

1. promptly notifies HP of the claim in writing;
2. cooperates with HP in the defense of the claim; and
3. grants HP sole control of the defense or settlement of the claim.

HP will pay infringement claim defense costs, HP-negotiated settlement amounts, and court-awarded damages.

- b. Remedies. If such a claim appears likely, then HP may modify the HP Branded Products or Support, procure any necessary license, or replace the affected item with one that is at least functionally equivalent. If HP determines that none of these alternatives is reasonably available, then HP will issue Customer a refund equal to:

1. the purchase price paid for the affected item if within one year of delivery, or the Customer's net book value thereafter; or
2. if the claim relates to infringing Support, the lesser of twelve (12) months charges for the claimed infringing Support or the amount paid by Customer for that Support.

- c. Exclusions. HP has no obligation for any claim of infringement arising from:

1. HP's compliance with Customer or third party designs, specifications, instructions, or technical information;
2. modifications made by Customer or a third party;
3. Customer's non-compliance with the Specifications or the Transaction Documents;
4. Customer's use with products, software, or services that are not HP Branded; or
5. Any open source or freeware software.

- d. Sole and Exclusive. This sub-section A.7 states HP's entire liability for claims of intellectual property infringement.

8. INTELLECTUAL PROPERTY RIGHTS

No rights in copyright, patents, trademarks, trade secrets, or other intellectual property are granted by either party to the other except as expressly provided under these Terms. Customer will not register or use any mark or internet domain name that contains HP's trademarks (e.g., "HP", "hp", or "Hewlett-Packard").

9. RESTRICTED USE

Products, Support, and Deliverables are not specifically designed, manufactured, or intended for use as parts, components, or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products, Support, or Deliverables purchased by Customer are used for these applications and will indemnify and hold HP harmless from all loss, damage, expense, or liability in connection with such use.

10. LIMITATION OF LIABILITY AND REMEDIES

- a. Limitation of Liability. Except for the amounts in sub-section A.7 above and damages for bodily injury (including death) HP's total aggregate liability is limited to the amount paid by Customer for:

1. the Product; or
2. Support during the period of a material breach up to a maximum of twelve (12) months;

that in each case is the subject of the claim.

- b. Disclaimer. EXCEPT FOR CLAIMS BY A PARTY FOR INFRINGEMENT OF THEIR INTELLECTUAL PROPERTY RIGHTS AGAINST THE OTHER PARTY, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL COSTS OR DAMAGES OF ANY KIND OR FOR ANY DOWNTIME COSTS; LOST BUSINESS, REVENUES, OR PROFITS; FAILURE TO REALIZE EXPECTED SAVINGS; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR SOFTWARE RESTORATION WHETHER OR NOT THAT PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH COSTS, EXPENSES, OR DAMAGES.



- c. Legal Theory. TO THE EXTENT ALLOWED BY LOCAL LAW, THESE LIMITATIONS WILL APPLY REGARDLESS OF THE BASIS OF LIABILITY, INCLUDING NEGLIGENCE, MISREPRESENTATION, BREACH OF ANY KIND, OR ANY OTHER CLAIMS IN CONTRACT, TORT OR OTHERWISE.

11. GENERAL

- a. Electronic Orders and EDI. Where facilitated under local law, the parties may do business electronically, including order placement and acceptance. Once accepted, such orders will create fully enforceable obligations subject to these Terms. Such orders and acceptances will be deemed for all purposes to be an original signed writing. Customer and HP will adopt commercially reasonable security measures for password and access protection.
- b. Internal Use. Products and Support acquired by Customer under these Terms are solely for Customer's own internal use and not for resale or sub-licensing.
- c. Force Majeure. Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control; however, this provision will not apply to Customer's payment obligations.
- d. Assignment. Customer may not assign, delegate or otherwise transfer all or any part of its rights or obligations under these Terms without prior written consent from HP. Any such attempted assignment, delegation, or transfer will be null and void. Assignments of HP Software licenses are subject to compliance with HP's Software license transfer policies.
- e. Export and Import. Customer who exports, re-exports, imports or otherwise transfers Products, technology, or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. HP may suspend performance under these Terms: 1) if the Customer is in violation of any applicable laws or regulations, and 2) to the extent necessary to assure compliance under the U.S. or other applicable export or similar regulations.
- f. Governing Law. Disputes arising from these Terms will be governed by the law of the jurisdiction of the principal place of business of the HP Affiliate accepting the order to which the dispute relates and the courts of that locale will have jurisdiction, except that HP may, at its option, bring suit for collection in the country where the Customer Affiliate that placed the order is located. Customer and HP agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms. Claims arising or raised in the United States will be governed by the laws of the State of California, excluding rules as to choice and conflict of law.
- g. Bankruptcy. If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- h. Survival. Any provisions in these Terms which by their nature extend beyond the termination or expiration of any sale or license of Products or Support will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns.
- i. Notices. All notices that are required under these Terms will be in writing and will be considered effective upon receipt.
- j. Entire Agreement. These Terms represent the entire agreement between HP and Customer regarding Customer's purchase of Products and Support, and supersedes and replaces any previous communications, representations, or agreements, or Customer's additional or inconsistent terms, whether oral or written. In the event any provision of these Terms is held invalid or unenforceable the remainder of the Terms will remain enforceable and unaffected thereby.
- k. Waiver. Neither party's failure to exercise or delay in exercising any of its rights under these Terms will constitute or be deemed a waiver or forfeiture of those rights.
- l. Order of Precedence. Unless otherwise agreed or provided herein, documents will apply in the following descending order of precedence:
 - 1. SLI;
 - 2. the sections of these Terms;
 - 3. the Statement of Work (if applicable);
 - 4. all Transaction Documents.
- m. Independent Contractor. HP is an independent contractor in the performance under these Terms and neither HP nor any HP personnel are employees or agents of Customer. Nothing in these Terms will be construed as creating a joint venture, partnership or employment relationship between the parties, nor will either party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other.



B. HP SUPPORT TERMS

1. SUPPORT SERVICES

- a. Description of Support. HP will deliver Support according to the description of the offering, eligibility requirements, service limitations, and Customer responsibilities described in the relevant Transaction Documents.
- b. Cancellation. Customer may cancel Support orders or delete Products from Support upon thirty (30) days written notice, unless otherwise stated in a Transaction Document. HP may discontinue Support for Products and specific Support services no longer included in HP's Support offering upon sixty (60) days written notice, unless otherwise stated in a Transaction Document. If Customer cancels prepaid Support, HP will refund Customer a pro-rata amount for the unused prepaid Support, subject to any restrictions or applicable early termination fees as set forth in a Transaction Document.
- c. Return to Support. If Customer allows Support to lapse, HP may charge Customer additional fees to resume Support or require Customer to perform certain hardware or software upgrades. Such fees may be set forth in a Transaction Document or provided to Customer at the time of the request to return to Support.
- d. Local Availability. Customer may order Support from HP's current Support offerings. Some offerings, features, and coverage (and related Products) may not be available in all countries or areas. In addition, delivery of Support outside the applicable HP coverage areas may be subject to travel charges, longer response times, reduced restoration or repair commitments, and reduced coverage hours.
- e. Relocation. Relocation of any Products under Support is the responsibility of Customer, and is subject to local availability as detailed in sub-section B.1.d, and may result in changes to Support fees. Reasonable advanced notice to HP may be required to begin Support for some Products after relocation. For Software Products, any relocation is also subject to the license terms for such Software. Customer may be required to execute amended or new Transaction Documents as a result of relocation.
- f. Multi-vendor Support. HP provides Support for certain non-HP Branded Products. The relevant Transaction Document will specify availability and coverage levels, and governs delivery of multi-vendor Support, whether or not the non-HP Branded Products are under warranty. HP may discontinue Support of non-HP Branded Products if the manufacturer or licensor ceases to provide support for such Products.
- g. Service Providers. HP reserves the right and Customer agrees to HP's use of HP-authorized service providers to assist in the delivery of Support.
- h. Modifications. Customer will allow HP, at HP's request and at no additional charge, to modify Products to improve operation, supportability, and reliability, or to meet legal requirements.
- i. Support Warranty. HP warrants that it will perform Support using generally recognized commercial practices and standards.
- j. Exclusive Remedies. HP will re-perform Support not performed in accordance with the warranty herein. This sub-section B.1.j states HP's entire liability for Support warranty claims.

2. PRICING, INVOICING, AND ADDITIONAL SERVICES

- a. Pricing. Except for prepaid Support or as otherwise stated in a Transaction Document, HP may change Support prices upon sixty (60) days written notice.
- b. Additional Services. Additional services performed by HP at Customer's request that are not included in Customer's purchased Support will be chargeable at the applicable published service rates for the country where the service is performed.
- c. Invoicing. Invoices for Support will be issued in advance of the Support period. HP Support invoices and related documentation will be produced in accordance with HP system standards. Additional levels of detail requested by Customer may be chargeable.

3. SITE AND PRODUCT ACCESS

Customer shall provide HP access to the Products covered under Support; and if applicable, adequate working space and facilities within a reasonable distance of the Products; access to and use of information, customer resources, and facilities as reasonably determined necessary by HP to service the Products; and other access requirements described in the relevant Transaction Document. If Customer fails to provide such access, resulting in HP's inability to provide Support, HP shall be entitled to charge Customer for the Support call at HP's published service rates. Customer is responsible for removing any Products ineligible for Support, as advised by HP, to allow HP to perform Support. If delivery of Support is made more difficult because of ineligible Products, HP will charge Customer for the extra work at HP's published service rates.

4. HARDWARE PRODUCT SUPPORT

- a. Minimum Configuration. Customer must purchase the same level of Hardware Support and for the same coverage period for: all Products within a minimum supportable system unit (i.e. all components within a server, storage, or network device) to allow for proper execution of standalone and operating system diagnostics for the configuration.



- b. Eligibility. For initial and on-going Support eligibility Customer must maintain all Hardware Products at the latest HP-specified configuration and revision levels and in HP's reasonable opinion, in good operating condition.
- c. Loaner Units. HP maintains title and Customer shall have risk of loss or damage for loaner units if provided at HP's discretion as part of Hardware Support or warranty services and such units will be returned to HP without lien or encumbrance at the end of the loaner period.
- d. Maximum Use Limitations. Certain Hardware Products have a maximum usage limit, which is set forth in the manufacturer's operating manual or the technical data sheet. Customer must operate such Products within the maximum usage limit.
- e. Compatible Cables and Connectors. Customer will connect Hardware Products covered under Support with cables or connectors (including fiber optics if applicable) that are compatible with the system, according to the manufacturer's operating manual.
- f. Support for Accessories. HP may provide Hardware Support for cables, connectors, interfaces, and other accessories if Customer purchases Support for such accessories at the same Hardware service level purchased for the Products with which they are used.
- g. Consumables. Hardware Support does not include the delivery, return, replacement, or installation of supplies or other consumable items (including, but not limited to, operating supplies, magnetic media, print heads, ribbons, toner, and batteries) unless otherwise stated in a Transaction Document.
- h. Replacement Parts. Parts provided under Hardware Support may be whole unit replacements or be new or functionally equivalent to new in performance and reliability and warranted as new. Replaced parts become the property of HP, unless HP agrees otherwise and Customer pays any applicable charges.

5. SOFTWARE PRODUCT SUPPORT

- a. Eligibility. Customer may purchase available Software Support for HP Branded Software only if Customer can provide evidence it has rightfully acquired an appropriate HP license for such Software. HP will be under no obligation to provide Support due to any alterations or modifications to the Software not authorized by HP or for Software for which Customer cannot provide a sufficient proof of a valid license. Unless otherwise agreed by HP, HP only provides Support for the current Version and the immediately preceding Version of HP Branded Software, and then only when HP Branded Software is used with hardware or software included in HP-specified configurations at the specified Version level.
- b. Documentation. If Customer purchases a Software Support offering that includes documentation updates, along with the right to copy such updates, Customer may copy such updates only for Products under such coverage. Copies must include appropriate HP trademark and copyright notices.

6. USE OF PROPRIETARY SERVICE TOOLS FOR SUPPORT

HP will require Customer's use of certain hardware and/or software system and network diagnostic and maintenance programs ("Proprietary Service Tools"), as well as certain diagnostic tools that may be included as part of the Customer's system, for delivery of Support under certain coverage levels. Proprietary Service Tools are and remain the sole and exclusive property of HP, are provided "as is," and include, but are not limited to: remote fault management software, network Support tools, Insight Manager, Instant Support, and Instant Support Enterprise Edition (known as "ISEE"). Proprietary Service Tools may reside on the Customer's systems or sites. Customer may only use the Proprietary Service Tools during the applicable Support coverage period and only as allowed by HP. Customer may not sell, transfer, assign, pledge, or in any way encumber or convey the Proprietary Service Tools. Upon termination of Support, Customer will return the Proprietary Service Tools or allow HP to remove these Proprietary Service Tools. Customer will also be required to:

- a. allow HP to keep the Proprietary Service Tools resident on Customer's systems or sites, and assist HP in running them;
- b. install Proprietary Service Tools, including installation of any required updates and patches;
- c. use the electronic data transfer capability to inform HP of events identified by the software;
- d. if required, purchase HP-specified remote connection hardware for systems with remote diagnosis service; and
- e. provide remote connectivity through an approved communications line.

7. CUSTOMER RESPONSIBILITIES

- a. Data Backup. To reconstruct lost or altered Customer files, data, or programs, Customer must maintain a separate backup system or procedure that is not dependent on the Products under Support.
- b. Temporary Workarounds. Customer will implement temporary procedures or workarounds provided by HP while HP works on permanent solutions.
- c. Hazardous Environment. Customer will notify HP if Customer uses Products in an environment that poses a potential health or safety hazard to HP employees or subcontractors. HP may require Customer to maintain such Products under HP supervision and may postpone service until Customer remedies such hazards.
- d. Authorized Representative. Customer will have a representative present when HP provides Support at Customer's site.



- e. Product List. Customer will create and maintain a list of all Products under Support including: the location of the Products, serial numbers, the HP-designated system identifiers, and coverage levels. Customer shall keep the list updated during the applicable Support period.
8. ACCESS TO HP SOLUTION CENTER AND IT RESOURCE CENTER
- a. Designated Callers. Customer will identify a reasonable number of callers, as determined by HP and Customer ("Designated Callers"), who may access HP's customer Support call centers ("Solution Centers").
 - b. Qualifications. Designated Callers must be generally knowledgeable and demonstrate technical aptitude in system administration, system management, and, if applicable, network administration and management and diagnostic testing. HP may review and discuss with Customer any Designated Caller's experience to determine initial eligibility. If issues arise during a call to the Solution Center that, in HP's reasonable opinion, may be a result of a Designated Caller's lack of general experience and training, the Customer may be required to replace that Designated Caller. All Designated Callers must have the proper system identifier as provided in the Transaction Documents or by HP when Support is initiated. HP Solution Centers may provide support in English or local language(s), or both.
 - c. HP IT Resource Center. HP IT Resource Center is available via the worldwide web for certain types of Support. Customer may access specified areas of the HP IT Resource Center. File Transfer Protocol access is required for some electronic services. Customer employees who submit HP Solution Center service requests via the HP IT Resource Center must meet the qualifications set forth in sub-section B.8.b above.
 - d. Telecommunication Charges. Customer will pay for its own telecommunication charges associated with using HP IT Resource Center, installing and maintaining ISDN links and Internet connections (or HP-approved alternatives) to the HP Solution Center, or using the Proprietary Service Tools.