

## HOSTEDBIZZ TERMS OF SERVICE

These Terms of Service sets out the terms on which HostedBizz is willing to provide access to its cloud infrastructure and associated services described in an order or purchased through the HostedBizz website. These Terms of Service together with any documentation attached or referenced herein Exhibits attached hereto (each as updated from time to time) together with the Cover Sheet constitutes the “**Agreement**”.

### 1. DEFINITIONS

“**Customer Data**” means all electronic data or information submitted by Customer or processed through the HostedBizz Services;

“**HostedBizz Equipment**” means the equipment owned by HostedBizz and used to provide the HostedBizz Services;

“**HostedBizz Services**” means: (i) the subscription-based cloud solutions ordered by Customer in an Order which may include HostedBizz Virtual Private Server, HostedBizz File Sharing and Synchronization Services, HostedBizz Backup Services and other services that may be added from time to time; and (ii) Support Services;

“**Intellectual Property**” means (a) any rights provided under (i) patent law, (ii) copyright law, (iii) trade-mark law, (iv) design patent or industrial design law or (v) any other statutory provision or common law principle applicable to this Agreement, including trade dress and trade secret law, which may provide a right in either ideas, formulae, algorithms, concepts, inventions or know-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions or know-how; and (b) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing;

“**Order**” means an order for goods and services in the form of a Cover Sheet to which these Terms are attached or a separate order form provided by HostedBizz to Customer;

“**Support Services**” means technical and non-technical support, such as troubleshooting, DNS, data or system recovery and other support offered by HostedBizz in connection with the Customer's use of the HostedBizz Services at the hourly rate indicated in an order; and

“**Term**” has the meaning given in an Order.

### 2. SERVICE TERMS.

**2.1 Provision of HostedBizz Services.** Conditioned on the terms of this Agreement and payment of the applicable fees, HostedBizz shall make the HostedBizz Services available to Customer during the Term for internal business use only.

**2.2 Customer Affiliates.** Customer Affiliates may purchase HostedBizz Services by executing Orders hereunder. Customer shall cause each Customer Affiliate to comply with the terms and conditions of this Agreement

to the full extent as if such Affiliate were a party hereto, and any act or omission relating to this Agreement by such Customer Affiliate shall be deemed an act or omission of Customer. In addition, each party may use one or more Affiliates to perform its obligations under this Agreement, provided that such use shall not affect such party's obligations hereunder and any act or omission by such Affiliate relating to this Agreement shall be deemed an act or omission of such party.

**2.3 Incremental Services.** From time to time, certain additional HostedBizz or third-party functionality (such functionality being deemed not to be part of the HostedBizz Services) may be made available by HostedBizz to Customer (in the case of third-party functionality, such functionality being made available on a pass-through basis pursuant to terms specified by the third-party provider of such functionality), and which additional functionality may be purchased by Customer for additional fees in accordance with such terms and conditions as may be applicable to such additional functionality (such terms and conditions prevailing in the event of any inconsistency with the terms and conditions of this Agreement).

**2.4 Service Changes.** Service downgrades (for instance, when changing to a hosting package that offers fewer options) will take effect at the account's anniversary date only (an account anniversary date corresponds to the day of the month at which an account was opened. For instance, if an account was opened on September 8, this account may be modified on the 8th of each month once the original commitment is over). Service upgrades and service downgrades, however, may take effect at any time.

### 3. USE OF THE HOSTEDBIZZ SERVICES.

**3.1 HostedBizz Responsibilities.** HostedBizz shall: (i) maintain the security and integrity of the HostedBizz Services and the Customer Data; (ii) provide basic support to Customer at no additional charge; and (iii) use commercially reasonable efforts to make the HostedBizz Services available twenty-four (24) hours a day, seven (7) days a week, except for: (a) planned downtime (of which HostedBizz shall give at least eight (8) hours' notice via the HostedBizz Services; or (b) any unavailability caused by circumstances beyond HostedBizz's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving HostedBizz employees), computer,

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telecommunications, Internet or hosting facility failures or delays involving hardware, software or power systems not within HostedBizz's possession or reasonable control, and denial of service attacks.

**3.2 Customer Responsibilities.** Customer shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the HostedBizz Services and notify HostedBizz promptly of any such unauthorized access or use; and (iii) comply with all applicable local, provincial, state, federal and foreign laws in using the HostedBizz Services.

**3.3 Acceptable Use Policy.** Customer must (and must ensure that its permitted users) at all times comply with the terms and conditions of HostedBizz's Acceptable Use Policy. HostedBizz reserves the right to amend its Acceptable Use Policy and the Customer's continued use of the HostedBizz Services after modification of the Acceptable Use Policy constitutes Customer's acceptance of such modifications.

### 4. FEES AND PAYMENT

**4.1 Fees.** In consideration for the receipt of the HostedBizz Services, Customer shall pay HostedBizz the fees indicated in an Order. All amounts are payable in Canadian dollars unless otherwise stated in an Order. Except as otherwise specified herein or in an Order, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, fees paid are non-refundable, and a subscription cannot be terminated during the relevant subscription term stated in the applicable Order. Because fees are based on monthly units, fees for subscriptions purchased in the middle of a monthly period will be charged on a prorated basis for the for monthly period in which the services were used. Upon account activation, HostedBizz reserves equipment and resources for the Customer's needs. Customer must pay its account even if not making any use of it.

**4.2 Invoicing & Payment.** Fees for the HostedBizz Services will be invoiced on a monthly basis and due net 30 unless otherwise set out in an Order. Customer is responsible for maintaining complete and accurate billing and contact information on the HostedBizz Services. Invoices are sent by email, upon request a copy can be sent by postal mail.

**4.3 Overdue Payments.** Any payment not received from Customer by the due date may accrue (except with respect to charges then under reasonable and good faith dispute), at HostedBizz' discretion, late charges at the rate of 1.5% of the outstanding balance per month (19.57% per

annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Taxes.** Unless otherwise stated, HostedBizz' fees do not include any direct or indirect local, state, provincial, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, goods and services, harmonized, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on HostedBizz' net income or property. If HostedBizz has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides HostedBizz with a valid tax exemption certificate authorized by the appropriate taxing authority.

**4.5 Suspension of HostedBizz Services.** If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of its other rights or remedies, HostedBizz reserves the right to suspend the HostedBizz Services provided to Customer, without liability to Customer, until such amounts are paid in full. A service reconnection charge of \$50 will apply to any suspended account that is to be reinstated.

**4.6 Credit Card Payments.** In the case of payments by credit card, HostedBizz will use the information in its possession to make a payment at the invoice date. The customer will not receive any previous notification but will receive a notice after every debit on the credit card. If ever the customer wants to disable the automatic charge, he only needs to contact the customer service via the HostedBizz web site at [www.hostedbizz.com](http://www.hostedbizz.com). If the customer wishes to re-enable the automatic credit card billing he only needs to contact the customer service via the HostedBizz web site at [www.hostedbizz.com](http://www.hostedbizz.com). By submitting an initial payment or re-activating the automatic charge option, Customer confirms that Customer has read and accepts the conditions related to the credit card charges. In addition, Customer grants HostedBizz the right to withdraw the amount of the unpaid balance from the credit card. Customer also authorizes the financial institution issuing the credit card to charge Customer's account for the amounts related to the HostedBizz Services. This authorization will be valid until an authorized person on the account asks to suspend the automatic charges.

**4.7 Credit Authorization.** Customer hereby authorizes HostedBizz and gives consent to HostedBizz

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under applicable privacy laws for HostedBizz to obtain credit information and bank and other financial references regarding the Customer for the purposes of assessing the Customer's credit worthiness, and Customer will promptly execute and deliver to HostedBizz such further documents and assurances and take such further actions as HostedBizz may from time to time reasonably request in order to carry out the intent and purpose of this Section.

**4.8 Fee Changes.** Upon 30 days or greater written notice prior to the end of any initial term indicated in an Order, HostedBizz Inc. may change any fees payable under this Agreement.

**4.9 Satisfaction Warranty.** Customer may terminate this Agreement within the first 30 days after account opening by giving HostedBizz at least 48 hours prior notice to [info@hostedbizz.com](mailto:info@hostedbizz.com) if Customer is not entirely satisfied with the HostedBizz Services.

**4.10 Refund Policy.** Any pre-payment is a commitment regarding the applicable payment period for HostedBizz Services. Pre-payments are non-refundable except where Customer is exercising its right to terminate pursuant to Section 4.9 above. If Customer wishes to terminate a product or service and not the entire Agreement, Customer's account may be credited with the value of advanced payments for that product or service and may be applied only to further purchases at HostedBizz. Billing errors can be credited retroactively for a period of up to two (2) months.

### 5. PROPRIETARY RIGHTS

**5.1 Reservation of Rights.** Subject to the limited rights expressly granted hereunder, HostedBizz reserves all rights, title and interest in and to the HostedBizz Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

**5.2 Restrictions.** Customer shall not (and shall not allow any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the HostedBizz Services except to the extent that enforcement is prohibited by applicable law notwithstanding a contractual provision to the contrary; (b) circumvent any user limits or other timing or use restrictions that are built into the HostedBizz Services; (c) remove any proprietary notices, labels, or marks from the HostedBizz Services; (d) frame or mirror any content forming part of the HostedBizz Services; (e) access the HostedBizz Services in order to: (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the HostedBizz Services.

**5.3 Customer Data.** As between HostedBizz and Customer, Customer exclusively owns all rights, title and interest in and to all Customer Data. Customer will receive full access to Customer Data and its server environments. Customer Data is deemed Confidential Information under this Agreement. HostedBizz shall not access Customer's user accounts, including Customer Data, except to respond to service or technical problems or at Customer's request or as necessary for the operation of the HostedBizz Services or billing. Customer is solely responsible for the content stored on and served by Customer's virtual private servers.

**5.4 Privacy.** HostedBizz will use the Customer's personal information only as reasonably necessary to provide the HostedBizz Services and to collect fees owed and will not disclose such information to any third party except as required by law as evidenced by an order of a court of competent jurisdiction and to collection services if needed. For further information on HostedBizz's privacy practices please contact [info@hostedbizz.com](mailto:info@hostedbizz.com)

**5.5 Suggestions.** HostedBizz shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual, unrestricted license to use and/or incorporate into the HostedBizz Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation of the HostedBizz Services.

**5.6 Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent, such consent not to be unreasonably withheld. Each party may include the name and logo of the other party in lists of customers or vendors and in marketing materials in accordance with the other party's standard trademark guidelines.

### 6. CONFIDENTIALITY

**6.1 Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential and proprietary information of a party (the "Disclosing Party") disclosed to the other party (the "Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement, the Customer Data, the HostedBizz Services, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving

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Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

**6.2 Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

**6.3 Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).

**6.4 Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**6.5 Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality requirements in this Agreement, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

### 7. WARRANTIES AND DISCLAIMERS

**7.1 Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. HostedBizz represents and warrants that it will provide the HostedBizz Services in a manner consistent with general industry standards reasonably applicable to the provision thereof.

**7.2 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, HOSTEDBIZZ MAKES NO REPRESENTATIONS AND PROVIDES NO WARRANTIES OR CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS,

INCLUDING ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, DURABILITY, TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### 8. LIMITATION OF LIABILITY

**8.1 Limitation of Liability.** SUBJECT TO SECTION 8.3, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER HEREUNDER IN THE THREE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

**8.2 Exclusion of Consequential and Related Damages.** SUBJECT TO SECTION 8.3, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**8.3 Certain Damages Not Excluded.** NOTWITHSTANDING THE GENERALITY OF THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, (II) DAMAGES ARISING FROM INFRINGEMENT AND/OR MISAPPROPRIATION OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; OR (III) ANY CLAIMS FOR NON-PAYMENT.

### 9. TERM AND TERMINATION

**9.1 Term of Agreement.** This Agreement shall commence as of the start date indicated on an Order or the date of execution of an Order (as applicable) and shall continue until terminated by either part on the terms hereof.

**9.2 Termination.** This Agreement may be terminated in the following ways:

- a) termination by either Party without it incurring liability where the other Party commits a material breach of any provision in this Agreement and fails to cure it

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within thirty (30) days after receipt of written notice of the breach;

- b) termination by HostedBizz of at least sixty (60) days written notice;
- c) termination by Customer providing at least forty-eight (48) hours' notice within the 30 day period of the satisfaction warranty as described in Section 4.9.
- d) suspended or terminated by HostedBizz without it incurring any liability whatsoever:
  - (i) immediately upon Customer's filing of a bankruptcy petition or similar proceeding under the law of any jurisdiction, or upon Customer becoming insolvent or making any assignment for the benefit of creditors, or upon the dissolution, liquidation, or appointment of a receiver of Customer's property or where any Law prohibits HostedBizz from providing HostedBizz Services.
  - (ii) upon providing forty-eight (48) hours' notice where possible, where Customer's use is or is reasonably suspected by HostedBizz of using the Services in a fraudulent or illegal manner, or Customer fails to meet HostedBizz's credit requirements; or
  - (iii) upon providing Customer with ten (10) days prior written notice, where Customer has failed to make payment in full of all undisputed portions of an invoice.
  - (iv) Termination by Customer immediately upon HostedBizz filing a bankruptcy petition or similar proceeding under the law of any jurisdiction, or upon HostedBizz becoming insolvent or making any assignment for the benefit of creditors, or upon the dissolution, liquidation, or appointment of a receiver of HostedBizz's property.

**9.3 Early Termination Fee.** If Customer terminates this Agreement other than in accordance with Section 4.9 or for uncured breach of HostedBizz under Section 9.2(a), Customer will be required to pay to HostedBizz as liquidated damages, and not as a penalty, an amount which is equal to: (a) fifty percent (50%) of the average monthly usage (where applicable); plus (b) fifty percent (50%) of the monthly recurring charge for each of the HostedBizz Services, multiplied by the number of months remaining in

the then current Term. In addition, Customer will be responsible for any other charges that HostedBizz, acting reasonably, is liable to incur for the remainder of the then current Term, including without limitation, set up fees, technical services, and Customer will forfeit a refund of any prepayment made for Services.

**9.4 Outstanding Fees.** Termination shall not relieve Customer of the obligation to pay any fees accrued or payable to HostedBizz prior to the effective date of termination.

**9.5 Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 5-8, 9.3, 9.6 and 10.

## 10. GENERAL PROVISIONS

**10.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**10.2 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**10.3 Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) the second business day after sending by confirmed facsimile; or (iv) the second business day after sending by email. Notices to HostedBizz shall be addressed to the attention of the Legal Department. Notices to Customer shall be addressed to Customer's signatory of this Agreement unless otherwise designated below.

**10.4 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**10.5 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**10.6 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld).

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Notwithstanding the foregoing, each party may assign this Agreement in its entirety (including all orders), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**10.7 Governing Law.** This Agreement shall be governed by the laws of the Province of Ontario, Canada, without regard to its conflict of law principles. No choice of laws rules of any jurisdiction shall apply to this Agreement. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.

**10.8 Venue; Waiver of Jury Trial.** The provincial and federal courts located in Ottawa, Ontario, Canada, shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

**10.9 Force Majeure.** Neither party shall be responsible for its failure to perform to the extent due to unforeseen circumstances or causes beyond its control, including but not limited to acts of God, wars, terrorism, riots, embargoes, acts of civil or military authorities, fires, floods, accidents, or strikes, labour problems (other than those involving the employees of the affected party), computer, telecommunications, Internet HostedBizz or hosting facility failures or delays involving hardware, software or power systems not within a party's possession or reasonable control, provided that such party gives the other party prompt written notice of the failure to perform and the reason therefore and uses its reasonable efforts to limit the resulting delay in its performance.

**10.10 Export.** Customer acknowledges and agrees that the HostedBizz Services may be subject to export and import controls under the regulations of Canada, the United States and other countries, and Customer shall comply with all export and import control regulations of such countries. Customer shall not use the HostedBizz Services for any purposes prohibited by export laws, including, without limitation, nuclear, chemical or biological weapons proliferation. Customer shall be responsible for procuring all required permissions for any

subsequent export, import or use of the HostedBizz Services.

**10.11 Entire Agreement.** This Agreement, including all schedules, Schedules and addenda hereto and all Orders, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. These Terms of Service apply to any Order agreed by the Parties unless a separate agreement is entered into by the parties which expressly supersedes these terms. HostedBizz reserves the right to update and modify these terms from time to time and the date of last modification is indicated below. Any revisions to these Terms will apply to new Orders concluded after the date the Terms were updated. For pre-existing Orders already governed by a version of these Terms, no modification, amendment, or waiver of any provision of these Terms shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of these Terms and any schedule, Schedule or addendum hereto or any Order, the terms of such schedule, Schedule, addendum or Order shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

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