



Hewlett Packard Enterprise

operated by Selectium

DIRECT CUSTOMER TERMS

1. Parties. These terms represent the agreement ("Agreement") that governs the purchase of selected hardware and software products and associated services from the Selectium Enterprise Ltd or its Affiliate identified here as ("Selectium") by the Customer entity identified here as ("Customer").
2. Orders. "Order" means the accepted order including any supporting material (such as product lists, specifications, published warranties) which the parties identify as incorporated either by attachment or reference and that may be available to Customer in hard copy or by accessing a designated HPE or Selectium website ("Supporting Material").
3. Scope and Order Placement. These terms may be used by Customer either for a single Order or as a framework for multiple Orders. In addition, these terms may be used on a global basis by the parties' "Affiliates", meaning any entity controlled by, controlling, or under common control with a party. The parties can confirm their agreement to these terms either by signature where indicated at the end or by referencing these terms on Orders. Affiliates participate under these terms by placing orders which specify product or service delivery in the same country as the Selectium Affiliate accepting the Order, referencing these terms, and specifying any additional terms or amendments to reflect local law or business practices.
4. Order Arrangements. Customer may place orders with Selectium through a designated customer-specific portal, by fax or email. Where appropriate, orders must specify a delivery date. If Customer extends the delivery date of an existing Order beyond ninety (90) days, then it will be considered a new order. Customer may cancel a hardware Order at no charge up to five (5) business days prior to shipment date.
5. Prices and Taxes. Prices will be as quoted in writing by Selectium or, in the absence of a written quote as set out in a designated customer-specific portal, at the time an order is submitted to Selectium. Prices are exclusive of taxes, duties, and fees (including installation, shipping and handling) unless otherwise quoted. If a withholding tax is required by law, please contact the Selectium order representative to discuss appropriate procedures.
6. Invoices and Payment. Customer agrees to pay all invoiced amounts within thirty (30) days of Selectium's invoice date. Selectium may suspend or cancel performance of open Orders or services if Customer fails to make payments when due.
7. Title. Risk of loss or damage to hardware products will pass upon delivery to Customer or its designee. Selectium shall retain title in products until full payment is received, except for hardware purchases in the United States where title passes upon delivery and Selectium retains a security interest in products sold until full payment is received.
8. Delivery. Selectium will use all commercially reasonable efforts to deliver products in a timely manner. Selectium may elect to deliver software and related product/license information by electronic transmission or via download.
9. Installation. If Selectium is providing installation with the product purchase, HPE's site guidelines (available upon request) will describe Customer requirements. Selectium will conduct HPE's standard installation and test procedures to confirm completion.
10. Support Services. HPE support services will be described in the applicable Supporting Material, which will also cover eligibility requirements, service limitations and Customer responsibilities.
11. Product Performance. All HPE-branded products are covered by HPE's limited warranty statements provided with the products or otherwise made available in Supporting Material. Non-HPE branded products and services receive warranty coverage as provided by the relevant third party supplier.
12. Warranty Claims. When HPE or Selectium receives a valid warranty claim, HPE or Selectium will either repair the relevant defect or HPE will replace the product. If HPE is unable to do either within a reasonable time, Customer will be entitled to a full refund upon the prompt return of the product to HPE or Selectium. HPE or Selectium will pay for shipment of repaired or replaced products to Customer and Customer will be responsible for return shipment of the product to HPE or Selectium as directed. This Agreement states all remedies for warranty claims. To the extent permitted by law, HPE and Selectium disclaim all other warranties.
13. Eligibility. Selectium's service, support and warranty commitments do not cover claims resulting from:
 - Improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 - Modifications or improper system maintenance or calibration not performed by Selectium or authorized by Selectium;
 - Failure or functional limitations of any non-HPE software or product impacting systems receiving Selectium support or service;
 - Malware (e.g. virus, worm etc.) not introduced by Selectium; or
 - Abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Selectium's control
14. Dependencies. Selectium's ability to deliver services will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the services.
15. Change Orders. The parties shall each appoint a project representative to serve as the principal point of contact in managing the delivery of services and in dealing with issues that may arise. Requests to change the scope of services or deliverables will require a change order signed by both parties.
16. Services Performance. Services are performed using generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any such service concerns and Selectium will re-perform any service that fails to meet this standard.
17. Intellectual Property Rights. No transfer of ownership of any intellectual property will occur under this Agreement. Customer grants Selectium a non-exclusive, worldwide, royalty-free right and license to any intellectual property that is necessary for Selectium and its designees to perform the ordered services.
18. Intellectual Property Rights Infringement. HPE will defend and/or settle any claims against Customer that allege that an HPE-branded product as supplied under this Agreement infringes the intellectual property rights of a third party. HPE will rely on Customer's prompt notification of the claim and cooperation with their defense. HPE may modify the product so as to be non-infringing and materially equivalent, or HPE may procure a license. If these options are not available, HPE will refund to Customer the amount paid for the affected product in the first year or the depreciated value thereafter. HPE nor Selectium are not responsible for claims resulting from any unauthorized use of the products.
19. License. HPE grants Customer a non-exclusive license to use the version or release of the delivered HPE-branded software. Permitted use is for internal purposes only (and not for further commercialization), and is subject to any specific software licensing information that is in the software product or its Supporting Material. For non-HPE branded software, the third party's license terms will govern its use. Customer may not sublicense, assign, transfer, rent, or lease the software or software license except as permitted by HPE or Selectium.
20. Confidentiality. Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) was known or becomes known to the receiving party without obligation of confidentiality; ii) is independently developed by the receiving party; or iii) where disclosure is required by law or a governmental agency.
21. Personal Information. Each party shall comply with their respective obligations under applicable data protection legislation. Selectium does not intend to have access to personally identifiable information ("PII") of Customer in providing services. To the extent Selectium has access to Customer PII stored on a system or device of Customer, such access will likely be incidental and Customer will remain the data controller of Customer PII at all times. Selectium will use any PII to which it has access strictly for purposes of delivering the services ordered.
22. Global Trade Compliance and Recycling. Products and services provided under these terms are for Customer's internal use and not for further commercialization. If Customer exports, imports or otherwise transfers products provided under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Selectium may suspend its performance under this Agreement to the extent required by laws applicable to either party.
23. US Federal Government Use. If software is licensed to Customer for use in the performance of a US Government prime contract or subcontract, Customer agrees that consistent with FAR 12.211 and 12.212, commercial computer software, documentation and technical data for commercial items are licensed under HPE's standard commercial license
24. Limitation of Liability. Selectium's liability to Customer under this Agreement is limited to the greater of \$1,000,000 or the amount payable by Customer to Selectium for the relevant Order. Neither Customer nor Selectium will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either party's liability for: unauthorized use of intellectual property, death or bodily injury caused by their negligence; acts of fraud; willful repudiation of the Agreement; nor any liability which may not be excluded or limited by applicable law.
25. Disputes. If Customer is dissatisfied with any services purchased under these terms and disagrees with Selectium's proposed resolution, both parties agree to promptly escalate the issue to a Vice President (or equivalent executive) in their respective organizations for an amicable resolution without prejudice to the right to later seek a legal remedy.
26. Force Majeure. Neither party will be liable for performance delays or non-performance due to causes beyond its reasonable control, except for payment obligations.
27. Termination. Either party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. If either party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other party may terminate this Agreement and cancel any unfulfilled obligations. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both parties' respective successors and permitted assigns
28. General. This Agreement represents our entire understanding with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both parties. This Agreement will be governed by the laws of the country of Selectium or the Selectium Affiliate accepting the Order and the courts of that locale will have jurisdiction, however Selectium or its Affiliate may bring suit for payment in the country where the Customer Affiliate that placed the Order is located. Customer and Selectium agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Claims arising or raised in the United States will be governed by the laws of the state where Customer's US Affiliate is headquartered, excluding rules as to choice and conflict of law.